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Supreme Court, U.S.
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No. 09-___

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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May 18, 2009

QUESTIONS PRESENTED

1. Infringement of Due Process of Law by CCP § 391 The First Amendment allows prior restraint on disclosure of some military secrets and may subject one who often "yells 'fire' in a crowded theater" to prior restraint. Likewise, there is some constitutional space for vexatious litigant restrictions that limit the right to petition for redress of grievances via the courts. Can the concept of "multiple frivolous litigations" be stretched to the point where unsuccessful discretionary appeals from attorney's fees awards (for resisting previous attorney's fees awards) by self-represented Defendants in a single action, can each be termed as "separate litigations" and each stage of the appeal process be classified as a "final determination" (even though no opinion is issued except for a statement that review is denied), for purposes of a finding that such defendants are "vexatious litigants." Is *Marbury v Madison* still good law? ("The very essence of civil liberty certainly consists in the right of every individual to claim the protections of the laws, whenever he receives an injury.")

2. Infringement of Equal Protection by CCP § 391 Can defendants labeled as vexatious litigants be subjected to prior restraint of their right to appeal a State Superior Court's vexatious litigant finding to higher courts, and can that court circumscribe other appeals from its actions? Can any and all unauthorized appeals properly be punished by fines and imprisonment for contempt of court? Can such an open-ended prior restraint on court filings (for whatever purpose and however labeled), properly take precedence over U.S. Supreme Court Rule 29.3, so

that a copy of a Petition for Certiorari by defendants thus labeled, is rejected from the main case file of the court where this action has been brought. Can a Superior Court ignore the existence of an appeal it has excluded from the case file and immediately enforce a judgment under appeal contrary to explicit stay requirements of state law? Will the United States Supreme Court stay such an enforcement while it considers an appeal of related alleged violations of federal law, when it was impossible for a "vexatious litigant" to first submit such a stay request to the court affected, because any such a stay request has been classified as prohibited "new litigation"?

3. Does CCP § 1161.2(c) violate Due Process of Law? Is secrecy in the adjudication of Unlawful Detainer actions, (for the first 60 days statewide and much longer in Sonoma County), a deprivation of Due Process of Law, when its purpose is to limit awareness of their legal rights by tenants facing eviction? Is an eviction in a civil action, sufficiently life altering in its consequences, that the public trial mandate of the Sixth Amendment applies? Does Justice Brandeis' maxim that "Sunlight is the best disinfectant" embody evolving standards of fair play (in a parallel fashion to Eighth Amendment jurisprudence) so as to have become a normal ingredient of Due Process of Law?

4. Does CCP § 1161.2(c) violate Equal Protection? If a state constitution requires jury trials in civil matters to the same or greater degree than the Seventh Amendment, must this right be made available to all classes of civil litigants without

irrational distinctions? Are special secrecy provisions for Unlawful Detainer actions (explicitly designed to preclude self-represented tenants from learning of procedural options available to tenants able to afford an attorney) a violation of Equal Protection of the Laws, when the effect of the secrecy is to make it inevitably self-defeating for tenants to exercise their right to a jury trial?

5. Is Off-The-Record Judicial Action Unreviewable? Can a judicial action, taken off the record (in the sense that there is nothing in the case file, electronic docket or court-room minutes to cause a reasonable person to understand that this action has taken place) become immune to federal Due Process review? (Here the only reviewing court which provides an opinion says: "appellants fail to demonstrate any reversible error with respect to [a bench ruling saying no more than the amount of the award] or any order appealed from by way of appellants' notices of appeal.")

6. Trial Court Circumvents Timely Notice of Appeal Where a trial court signs a September 25, 2007 order and inserts it in the case file without serving it on the parties, and where the party granted $10,000 in attorney fees by that order does not serve it, but uses it to secure a writ of execution on October 2, 2007 (without notifying the opposing party) and the trial court falsely asserts in an (11/7/07) docket entry that the (9/25/07) order has been served, is the trial court required to respect the 90 day period allowed for appealing unserved orders, and recognize the validity of a November 21, 2007 Notice of Appeal from the $10,000 fees award?

7. Simply ignoring pivotal factual and legal issues Here the Appellate Branch recognized the validity of Defendants' November 21, 2007 Notice of Appeal and (on 1/14/08) scheduled a hearing on it. Later, the Appellate Branch refused to address the validity of actions taken to enforce the $10,000 fees judgment in disregard of this Notice of Appeal. This enforcement violated CCP § 916(a) stay provisions. Is this a proper exception to the general policy of Rule 10, which may shield erroneous factual findings and misapplications of recognized rules of law from review?

8. Right to rebut "stealth" grounds for opposition California's CCP § 703.560 requires a judgment creditor who opposes a Claim of Exemption to provide (ten days before the hearing) facts supporting his opposition. Here the judgment creditor violated the ten day notice period and said no more than that the cited decisional and statutory basis for the Claim of Exemption "does not apply to James Parker." Here the judge refused to allow supplemental written proof that CCP § 916(a) and 917.1(d) do indeed apply (as noted in *Ziello v Superior Court*, *Nielsen v Stumbos* and *Vadas v Sosnoski*), despite authorization for such supplemental proof by CCP § 703.580 (a) & (c). Is it a violation of Due Process of Law for the trial court to have deprived judgment debtor of an opportunity to respond, because "when a Court considers a claim of exemption, the only documents that are under consideration with regard to the motion are the claim of exemption itself and the notice of opposition"?

9. Can Trial Courts Issue *Fait Accompli* Judgments? If a Claim of Exemption is denied on November 20th on the ground there has been no valid appeal, an appeal is perfected on November 21st, and a Claim of Exemption citing this appeal is filed on November 21st, can this appeal be ignored (along with California's CCP § 916(a) and § 917.1(d)) so as to enforce a judgment for attorney's fees and other costs, on November 26th, without waiting for the appeal to be decided?

10. Is Review of Sub Rosa Judicial Action Untimely? Where Defendants have reason to believe their November 21, 2007 Notice of Appeal has been respected (when, in fact, it was by-passed by off-the-record instructions to the Sheriff on November 26, 2007), does refusal of the Sheriff's office to provide any proof of what has transpired (insisting over a period of many months that Defendants should "check the file" for the proof they needed), provide a basis for federal review of this matter (in spite of state remedies not having been exhausted, because the Appellate Branch has refused to address the off-the-record turnover, since Defendants thought their money would be retained in the Sheriff's holding account, and did not raise the issue of a possible turnover, in their November 21, 2007 Notice of Appeal?

11. Does Federalism Protect Insider Favoritism? Where a judge has been censured for dishonesty and admitted favoritism by the State Commission on Judicial Performance, and California (in CCP § 1281.9) allows a litigant one peremptory challenge of a trial judge, and there is a governing

precedent (*Haworth v Superior Court*) which invalidates everything a judge does in a case (who fails to disclose a prior censure, so that the right of peremptory challenge may be exercise in an informed manner), is this aspect of state law federally enforceable, in spite of a "hands off" attitude of state appellate judges? If this is not true as a general matter, will the Supreme Court make an exception where the judge in question has been censured for seeking favored treatment for herself, on the ground that her husband is a Justice of the State Court of Appeal?

12. Hidden Favoritism toward a Judge's Supporters Here the Commission on Judicial Performance notes that one reason it did not seek to remove Judge Elaine Rushing from office, was the fact that several members of the local legal community came forward in her defense. Judge Rushing has not made the list of her supporters public, and the attorney she has awarded $50,000 in attorney's fees to has refused to say whether he is among those who urged that Judge Rushing be retained in office. Is canon 1 of California's Code of Judicial Ethics (which requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) federally enforceable, in the sense that the appearance of partiality toward the recipient of $50,000 in UNEXPLAINED attorney fees is a violation of Due Process of Law?

13. Change of Venue When Favoritism Runs Rampant NONE of the rulings of the trial court EVER MENTION well documented charges of misconduct by Plaintiff's counsel, and none of the

rulings of the Appellate Branch EVER MENTION well documented charges of judicial misconduct. California's appeal process in limited jurisdiction cases (where cases involving more than $25,000 are not supposed to be considered) is described in the June Primary 1998 Voter's Pamphlet argument against Proposition 220: "Under this proposal superior court judges will be assigned to sit on an appellate court to review the decisions of other superior court judges in cases that used to go to the municipal court. A judge cannot fairly review the work of a colleague, knowing that perhaps next week their roles will be reversed. The appearance and substance of justice will be questioned and public confidence in the courts will be eroded." Does the totality of an appearance of an "I'll watch your back, you watch mine" mentality on the Sonoma County Superior Court, rise to the level of entitling Defendants to an entire fresh start with a change of venue to some other county?

14. Subterfuge Hardly Falls within the Domain of Law May a Sheriff accept as a basis for enforcement action, a judicial ruling that arguably fits the circumstances of a case at the time a ruling was made, but is untenable in view of a Notice of Appeal and Claim of Exemption which precedes by five days implementation of the original ruling? Does this violate *Yick Wo v Hopkins*, which bars discretion "which is purely arbitrary and acknowledges neither guidance nor restraint"? Where there is no legal basis for enforcing a judgment while it is under appeal, does a judge who operates off-the-record to accomplish this, act "without any semblance of jurisdiction" within the meaning of judicial immunity

from personal accountability for a judge's official acts?

15. OEX Effort to Facilitate Premature Enforcement When state law says that a judgment under appeal is not enforceable when it consists of only attorney's fees and other costs, may Order of Examination proceedings be calendared before the initial appeal is filed and go forward a month after an appeal has been perfected? Where a trial court is willing to operate off the record and a sheriff is willing to seize bank accounts whenever told to do so by this judge, does forced disclosure of financial information effectively amount to an unconstitutional confiscation of property in violation of the Due Process Clause of the Fourteenth Amendment?

16. Relief from OEX Interference with Our Appeals If after three OEX hearings (and research by defendants) the judge realizes that such proceedings were premature, can defendants who were thus diverted from working on their appeals be properly given a "second bite at the apple" with respect to seeking discretionary review (with respect to other legal issues not directly involved in the OEX proceedings)?

17. Is Discretionary Review Protected by Stay Rules? If OEX hearings are reset (after briefing for the first level of appellate review, but the hearing has not yet been held), does a subsequent ruling in Plaintiff's favor by the local Superior Court Appellate Branch justify forcing the disclosure of financial information, even though Defendants are seeking discretionary review of the Appellate Branch

ruling?

18. Two-Way Responsibility to Observe Court Rules Can an attorney threaten unrepresented Defendants with "the utmost of every possible sanction" (without objection by the judge conducting OEX proceedings), violate the procedural rights of Defendants, and attempt to mislead the court, in violation of Code of Business and Professions § 6068(d), (again without objection by the judge), without giving rise to an Equal Protection grievance cognizable in federal court?

19. Rectification of Time Lost in OEX Proceedings Here, after four MORE OEX hearings (and even greater expenditure of time and effort by Defendants), the judge conducting OEX proceedings recognized that he had again acted prematurely in seeking to force the disclosure of financial information with contempt of court threats. Does refusal by the State Supreme Court to reconsider its denial of discretionary review and reissue it (to give Defendants a "fresh clock" on the start of the 90-day deadline for U.S. Supreme Court review under 28 U.S.C. § 1257), constitute a federally cognizable grievance?

20. Adverse Impact of No Hearing or Transcript Are self represented Defendants, as a matter of Equal Protection of the Laws, entitled to the right (recognized in California's governing precedent *Grant Cooper v Superior Court*) to a hearing before a judge where reasons are discussed, that a judge's order that is the basis for contempt proceedings is in fact unlawful. Where the OEX judge has previously allowed a period of reflection and an

opportunity to present supplemental authorities before finalizing a contempt finding, is the conversion of what Defendants expected would be an April 20, 2009 hearing into an ex parte (no contact with the judge) rejection of an application a violation of Due Process of Law? Where the OEX judge had previously issued an order to supply information embodied in a transcript of proceedings, before attempting to finalize a contempt finding for refusal to comply, does the absence of a transcript (and no urgency, other than maximizing disruptive impact on Defendants' attempts to appeal the judgment whose enforcement is at issue), justify a federal finding that Due Process of Law has been violated?

21. Judge Boyd Ignores Defendants' Federal Appeal Here the judge conducting OEX proceedings initially considered an appeal to the U.S. Supreme Court, to be of no consequence, with respect to immediate enforcement of a fees judgment. He convened an EIGHTH OEX hearing where he sentenced Defendant to jail for asserting that federal appeal rights are part of the automatic stay provision of California's CCP § 916(a). Does a self-represented litigant's refusal to supply financial information in these circumstances justify a contempt of court jail sentence?

22. Significance of Inconsequential Habeas Lateness Does refusal by a state court of last resort, to consider a habeas corpus appeal on grounds of lack of timeliness, bar federal review of this issue in the following circumstances?: **a)** The hand delivered appeal reached the State Supreme Court several hours to two days earlier than it would have (on the

morning after the deadline), if placed in the U.S. mail (or given to an overnight delivery service) on the last allow-able day. **b)** At least several days of Defendant's preparation time for this habeas appeal were taken away by premature OEX enforcement efforts, and by other time consuming collateral attacks (a vexatious litigant initiative and a fourth ($19,000) demand for attorney fees by Plaintiff's counsel).

23. Should Defendant be Protected from OEX Abuse? The applicability of Sixth Amendment rights to contempt of court proceedings is recognized by *In re Oliver*. Can a judge conducting OEX proceedings dispense with the protections available for indirect contempt findings, when he does not allow defendants any opportunity to explain why their right to conduct their own case is being violated? When Judge Boyd (as he notes in his Order of July 23, 2008) has taken the time to study the file, his orders have ultimately come into compliance with legal requirements. But Judge Boyd's insistence on silencing Defendant Halliwell (who conducted the trial court proceedings which gave rise to the fees judgment whose enforcement is being sought) was the main reason why so many OEX hearings were necessary. In such circumstances, where an OEX judge has repeatedly allowed counsel for the judgment creditor to exploit loopholes in his prior stay orders, thereby imposing a tremendous burden on Defendants, is a United States Supreme Court stay of further proceedings below appropriate, until it has decided to grant certiorari of the California Supreme Court's denial of discretionary review in S168827 and S169634?

24. Is a Retrospective Fresh Clock a Proper Remedy? Does recognition by the OEX judge, in a subsequent order, that OEX proceedings are still premature, provide a basis for the U.S. Supreme Court to grant a "fresh clock" with respect to judgments more than 90 days past final action by state courts, where various tactics by Plaintiff and Sonoma County Superior Court were clearly and unequivocally efforts to disrupt Defendants' exercise of their right to seek federal review of alleged violations of their federal rights?

25. Basis for Disputed $20,720 Reading Fee Award This eviction situation is based on an unsuccessful attempt to invoke the Bill of Rights with respect to conditions, covenants and restrictions barring participation of tenants in dispute resolution procedures where homeowners, who elect the governing board, have full participation rights. Here there was also a demand for an UNREVIEWABLE $4,000 attorney's fees payment, as a condition for being given a reasonable time to find somewhere else to live. Can $10,000 in attorney's fees be properly imposed for resisting the $4,000 demand, and can $20,720 be awarded for reading the briefs seeking to document the facts of the case for the benefit of higher courts, without the total $30,000 award violating the Due Process Clause of the Fourteenth Amendment?

26. Two Front Overload of Pro Se Litigants' Capacity Does the overlap between briefing schedules for appeals of prior fees awards and for motions seeking additional fees (for resisting the

prior awards) constitute an adequate basis for a continuance so that future fees requests are put on the back burner, while appeals of prior fees awards go forward? Where a trial court supports opposing counsel's claim "we're under no obligation to time our motions to go along with whatever they have going on", does this constitute "jamming" Defendants and "keeping the heat on", which a state governing precedent (*Gamet v Blanchard*) has found to constitute a deprivation of Due Process of Law? Does the refusal of a Presiding Judge of a Superior Court to respond at all to a motion for a continuance in these circumstances constitute a violation of Equal Protection of the Laws?

27. Significance of the Absence of a Fees Justification Can a presumption that the trial court judge is best situated to determine the proper amount of attorney's fees be overcome, as a matter of Due Process of Law, when the party seeking the fees says NOTHING in support of the right to any fees or the proper level of payment at the fees hearing, and the trial court judge simply signs an order handed to her which says NOTHING about the issues involved, except to specify the amount to be awarded?

28. Payment Must be Refused for Fraudulent Tactics Where a long-standing California governing precedent (*Clark v Millsap*) and that State's Code of Business and Professions (§ 6068(d)) precludes use of fraudulent tactics and payment for activities tainted with fraud, may an opposing party be required to pay a lawyer for simply reading charges of misconduct against him, when that lawyer never cites ANY example of incorrect charges and insists,

without specificity, that what he has read consists only of "whimsy, dribble and nonsense"?

29. Affirmative Justification of Defendants' Filings Here State law (*Serrano v Unruh*) creates a safe harbor for voicing legitimate objections, and Defendants faced by a demand for payment for reading briefs (on issues where NO COURT HAS EVER DETERMINED PLAINTIFF TO BE A PREVAILING PARTY). Here every one of the briefs for which a reading fee is demanded is quoted extensively in a 293 page Notice of Appeal, and Plaintiff's counsel could not cite even a single excerpt in the Notice of Appeal where Defendants' position is wrong (or any other passage in the materials read which is legally or factually erroneous). Is an UNEXPLAINED award of fees here, for NOTHING MORE than brief reading, a plain violation of Due Process of Law?

30. Efforts to Sweep Fees-Related Issues under Carpet Here there has been a history in prior fees awards and rulings thereon by the Appellate Branch of trying to dispose of the issue before transcript-based briefing is possible, and to try to dispose of this issue on res judicata grounds once fees hearing transcripts can be cited in later appeal briefing. These transcripts show NO CONSIDERATION WHATSOEVER of the underlying fees-related issues at any of the trial court's fees hearings. Can fact-free, legal-concept-free, Court of Appeal orders be given any presumption of validity, when neither the members of the appeal panel, nor the counsel seeking fees payment said ANYTHING at all at any of the Appeal Hearings to support the award of fees?

31. Brief Reading Fee to Inhibit Documentation Here the Appellate Branch has engaged in evasive tactics to exacerbate a "two front" squeeze by protracted delays in preparation of transcripts and chronological indexes. It has refused to delay fees appeal hearings until transcripts are available, and has tried to obstruct filings which make Defendants' side of controversial issues available for higher court review (when the Appellate Branch has refused to address such issues). In this situation may a brief reading fee be considered a device to obstruct documentation of the facts and legal issues in the case, whereby opposing counsel and the Superior Court try to vitiate any meaningful appellate review?

32. Deliberate Cover-up to Protect Judge Rushing Here trial court judge Elaine Rushing was censured for her dishonesty and admitted favoritism, and therefore removed from involvement with criminal cases. But subsequently she was elevated to the position of Supervising Judge of the Civil Division. Appellate Branch judges have adamantly refused to address the dishonesty and favoritism which has been documented in detail with respect to Judge Rushing's conduct of a case. Would a reasonable person aware of the facts (California's legal reference point) conclude that Judge Rushing has been, in fact, the beneficiary of the favoritism she sought in the incident leading to her censure? Would an informed reasonable persons conclude that Defendants in *Paxinos v Halliwell & Parker* are being deliberately sacrificed by judges of the Appellate Branch, in order to spare Judge Rushing an embarrassment which could well become "the last straw," when she seeks

another six year term in office, for the first time since her censure?

33. Subserving Justice Limit on Attorney Fees Awards Does a system where reasonable attorney's fees are "too subjective" for any meaningful appellate review constitute a deprivation of property without Due Process of Law, for the party forced to pay fees WITHOUT ANY EXAMINATION OF THEIR VALIDITY. Are State (*Bailey v Taaffe*) limits on judicial discretion requiring it "to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of justice" federally enforceable as a matter of Equal Protection of the Laws?

34. Prevailing Party Status Limit for Fees Purposes In California (under *City of Shasta Lake v Shasta County*) "the law seeks to respect substance over nomenclature." Here opposing counsel asked the Appellate Branch to designate him as the prevailing party, for purposes of collecting attorney's fees for defending a judgment on appeal, but he did not secure such a designation. Here opposing counsel (Charles Jensen) could cite nothing in the briefs for which a reading fee is sought, where his position on any issue covered has been upheld by any court. Charles Jensen offered no defense of his claim for attorney fees at either the trial court fees hearing or the appeal hearing on its fees award. Would it elevate nomenclature over substance to treat Plaintiff's success in evicting Defendants, as a basis for prevailing party status in all subsequent appeals? Does the Equal Protection Clause of the Fourteenth Amendment protect Defendants in these circumstances?

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PETITION FOR A WRIT OF CERTIORARI

This Petition for Certiorari to the California Supreme Court seeks review of an aspect of the case (S169634) with a federal appeal deadline May 19, 2009. It is not possible at this time to deal with a third ($19,000) fees award in this case, which is now under appeal to the Appellate Branch of the Sonoma County Superior Court (with a May 26, 2009 deadline for the filing of Appellants' opening brief).

The Opinion Below dealt with a May 6, 2008 trial court judgment (drafted by Plaintiff's counsel) which said (without ANY additional explanation): "The Plaintiff's motion for attorneys fees for Plaintiff CHRYSANTHE E. PAXINOS as to Defendant JAMES PARKER only is granted in the amount of $20,680.00 and $40.00 for filing fee."

Defendants' preparation for the May 6, 2008 hearing was hampered by a struggle with the

Sheriff's Department Civil Bureau for information on how $10,118 in a holding account (which had been seized without warning from Defendant's bank account) had been turned over to Plaintiff's counsel to satisfy a previous fees award (where enforcement of this fees judgment was unequivocally barred by Sec 916(a) of California's Code of Civil Procedure). This logjam was broken on May 7, 2008 when the Sheriff's Civil Bureau provided records on this turnover which were missing (and are still missing) from the case file. Shortly thereafter, briefing on Defendants' November 21, 2007 Appeal from the illegal seizure of their $10,118 (which was originally authorized on January 14, 2008) was rescheduled on May 13, 2008.

The second-front squeeze between Judge Rushing's $20,720 attorney's fees award and her off-the-record funds turnover, was further complicated

by Plaintiff's counsel on May 23, 2008, when he initiated grossly premature Order of Examination (OEX) enforcement activity for the $20,720 fees award. Defendants argue in this Petition that a three-front squeeze (involving unequivocally illegal activity on the second and third fronts) constitutes a denial of Due Process of Law, in violation of the Fourteenth Amendment.

OPINION BELOW

The Appellate Branch Opinion of December 5, 2008 has an initial paragraph, noting that Defendants' appeal was set for oral argument on November 20, 2008, before Judges Rene Auguste Chouteau, Dana Beernink Simonds and James Bertoli. In its second paragraph, the Opinion notes that counsel for Plaintiff (Charles Jensen) and both Defendants (Michael Halliwell and James Parker) were present.

In its final paragraph the November 5, 2008 Opinion states:

> The trial court's attorney fee Order is **AFFIRMED**. De novo review indicates that an award of attorney's fees was proper and review of the record under the abuse of discretion standards indicates that the amount of attorney's fees is also proper.

Defendants' petition seeking reconsideration of this order was ignored until this one sentence response was filed on January 5, 2009: "Defendants' petition filed December 5, 2008 for the appeal heard by the Appellate Panel on November 20, 2008 is DENIED."

JURISDICTION

Defendants sought to clarify the evasive handling of Judge Rushing's unexplained $20,720 fees award, by an Appellate Branch Opinion (which was so generic it could have applied to any fees award, with the exception of the hearing date) in a

Petition for a Writ of Mandate (A123622), which was denied by the First District Court of Appeal on January 2, 2009 (in a one-judge order, which has no "law of the case" effect under Article VI § 14 of the California State Constitution, as noted in *Kowis v Howard* (1992) 3 Cal 4th 888, 894).

Defendants sought review of the First District Court of Appeal Order (that said only: "The petition for writ of mandate is denied.") by the California Supreme Court. Chief Justice George did not participate in the February 18, 2009 California Supreme Court Order (S169634) decision on Defendants' Petition, so 2/3 of the remaining six justices were required to grant review. The order of February 18, 2009 said only: "The petition for review is denied."

The deadline under 28 U.S.C. § 1257 to Petition for Certiorari to the California Supreme Court is May 19, 2009.

RELEVANT STATUTORY PROVISION

No statutory provisions were cited in any of the Court Orders related to this appeal (located in the Appendix) nor was any statute cited in Real Party's Opposition Briefing in the Superior Court. Real Party declined to respond to the California Supreme Court's briefing schedule in S169634. This evasiveness may be a natural outgrowth of the secret manner of handling Unlawful Detainer lawsuits.

California's unlawful Detainer Secret Trial Law makes a determine effort to block consultants from finding out about cases and educate tenants about their rights. Thus CCP § 1161.2(c) says [emphasis on the word "**and**" below is in Sonoma County's notice to tenants]:

> [A]ccess to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff **and** one defendant in the action **and** provides to the

> clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number **and** can establish through proper identification that he or she lives at the subject premises. (CR-044)

In Sonoma County, according to the Recourse Mediation service which tenants are told to contact on their Notice of the provisions of CCP § 1161.2(c), NO TENANT HAS EVER WON BY INVOKING A RETALIATORY EVICTION DEFENSE IN SONOMA COUNTY. Judge Rushing wouldn't allow the jury in *Paxinos v Halliwell & Parker* to be informed of any OTHER aspect of California laws against arbitrary discrimination in housing. Therefore, nearly all tenants challenging eviction in Sonoma County, have lost within the 60 days that secrecy is supposed to be in force under CCP § 1161.2(c) However, in Sonoma County **the secrecy apparently lasts for the entire duration of the**

case, if this is what is necessary to beat a tenant into submission. All of the Case File Folders are stamped Secret (see Exhibit V-1 at CR-1068), and whenever a hearing takes place, the listing outside of the courtroom says only "Secret Case" without mention of the names of the parties involved.

STATEMENT OF THE CASE

A. Plaintiff Files Lawsuit, Defendants Respond

The $20,720 Reading Fee granted to Charles Jensen, which is the focus of this Petition for Certiorari, is simply a device for punishing Defendants for resisting the strong anti-tenant bias of the Sonoma County Superior Court. To gain a proper perspective, it is important to review the issues at stake in *Paxinos v Halliwell & Parker* (which became *Halliwell et al., v Sonoma County Superior Court*).

At the outset, James Parker complained about the obscure charges in Plaintiff's Complaint:

> James Parker also complained, "I had been trying for six months to try to find out what the issue is without any success." (Transcript at 11:20-22) Since Plaintiff's documents relating to his request for a court trial were missing from the case file, Defendants protested the tactics of Plaintiff's attorneys in their June 11, 2007 Request for Jury Trial: **In the most literal sense of this expression, they are "trying to pull a fast one."** It is difficult to imagine how this case can be fairly adjudicated, unless Plaintiff is forced to divulge the facts on which he relied in making his decision to evict. The sort of "Star Chamber" proceedings apparently utilized by the Meadow Pines Homeowners Association, wherein the complaint was anonymous, its contents confidential and Mr. Parker had no right to confront his accuser, nor to offer any sort of defense, nor to learn what in fact transpired in these proceedings, if any action was indeed taken (pursuant to the notice appended to Plaintiff's complaint alleging "threatening behavior"); cannot be allowed to stand as a basis for eviction. (CR-021)

Michael Halliwell cited the legal basis for James Parker's Due Process claim:

> We are right in the middle of the Bill of Rights in this situation. We have a case where Mr. Parker is denied the right to confront his accusers. We have this anonymous complaint to go. We have the situation he has not been

> able to find out the nature of the charge against him, another aspect of the Sixth Amendment. And finally, he was in the very act of petitioning for redress of grievances protected by the First Amendment that alienated the landlord. So this landlord is engaged in a type of discrimination that's a straight on challenge to the Bill of Rights. And as our last line of defense, we plead the Due Process Clause of the 14th Amendment. (Transcript at 81:7-19) *International Shoe Co. v Washington* (1945) 326 U.S. 316, 319, discusses the scope of Fourteenth Amendment limitations on State legal procedures: "Whether due process is satisfied must depend, rather, upon the quality and nature of the activity *in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.*"

Defendants resisted the eviction threat based on a Kangaroo Court type process for dispute resolution used by the Meadow Pines Homeowners Association (which made second class citizens of tenants). Defendants relied on a well established federal governing precedent which invalidated the sort of unfair conditions, covenants and restrictions (CC & R's) faced by James Parker. (*Shelley v*

Kraemer (1948) 334 U.S. 1, 20: "*The difference between judicial enforcement and non-enforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.*") Defendants also relied on a very well-established California precedent (*Marina Point v Wolfson* (1982) 30 Cal 3d 924, 957-958) which holds that "in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment owner's traditional discretion to accept or reject tenants on the basis of the landlord's own likes and dislikes." However, the trial court (backed by the Appellate Branch) refused to allow any sort of anti-discrimination defense.

Judge Rushing NEVER cited any authority for any of her contested rulings at trial or at any

hearing. This exchange (CR-1376:2-10) on the first day of the jury trial is typical:

> Michael Halliwell asked landlord Gus Paxinos: "In exercising your right to elect to allow me to stay or not to stay, did you make any inquiries whatsoever from any source whatsoever about any characteristic whatsoever of Michael Halliwell." (Transcript at 224:6-9)
>
> Charles Jensen intervened: "Objection, Your Honor. Relevance." (Ibid at 224:10)
>
> Judge Rushing ruled: "Sustained." (Ibid at 224:11)
>
> Michael Halliwell responded: "I'm asking him about his decision making process; this is a discrimination case, and I don't understand how it could possibly be irrelevant, [asking] how he is exercising his discretion." (Ibid at 224:12-14)
>
> Judge Rushing replied: "I'm sustaining the objection." (Ibid at 224:16)
>
> Yet in his Appeal Response Brief of December 17, 2007, Charles Jensen argued falsely: "Appellants' claim that they were somehow prevented from presenting their discrimination claims is untrue." (CR-1695:7-8, CR-1922:23 to CR-1923:10)
>
> James Parker cited Justice Brandeis' famous

statement on concealment:

> "Sunlight is the best disinfectant," a well-known quote from U.S. Supreme Court Justice Louis Brandeis, refers to the benefits of openness and transparency. [It is as applicable in contemporary life as ever.] If questions from constituents, the public, or the media make leaders or other responsible parties obfuscate, the questions are usually valid and the answers are not. People who feel uncomfortable under the bright light of scrutiny and criticism often have something to hide. (CR-666:4-7)

Defendants' April 20, 2009 Petition for Certiorari complains that if California's higher appellate courts continue to turn a blind eye to the way California's "Secret Lawsuit" approach to contested evictions is applied in Sonoma County, the 90% of tenants in Unlawful Detainer actions who are self-represented will have no hope of justice.

B. Statewide & Local Unlawful Detainer Policy

The main driving force behind the systematic denial of Due Process of Law to Defendants in

Paxinos v Halliwell & Parker has been a desire to shield from scrutiny by higher courts, several Sonoma County Superior Court policies which are contrary to state law.

Parsons v Superior Court of Marin County (2007) 149 Cal.App.4th Supp. 1, 6 notes that "Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer." However, Sonoma County Superior Court turned a blind eye to outright perjury by Plaintiff, which deprived Defendants of 2/3 of the preparation time they were due under the actual circumstances of service. *Parsons* also notes that rules for a party's challenging the sufficiency of service should not be applied so as to construe this as a general appearance, because this "moots the very point he is seeking to raise." [Citation]

However, the Appellate Branch of Sonoma County Superior Court ignored this mandate also.

Although the Summons refers tenants to a Judicial Council Website which tells them that trial dates are set by the court after five days are allowed for input by both sides, Sonoma County Superior Court automatically gives the earliest available trial date to the landlord, thereby eliminating all but voluntary discovery.

It is impossible for Defendants in Unlawful Detainer lawsuits to secure implementation of their rights under state law in Sonoma County Superior Court, because the only avenue for filing motions is an affidavits-only process without oral argument, similar to the one used in Contra Costa County Family Court and stricken down in *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1354, where Justice

Kennard cited *Goldberg v Kelly* (1970) 397 U.S. 254, 268-269, which affirms:

> [The person facing property deprivation] is not permitted to present evidence to that official orally, or to confront or cross-examine adverse witnesses. *These omissions are fatal to the constitutional adequacy of the procedures. The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.* Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.

Having failed to "shut down" the determined effort of Defendants to uphold important aspects of the Rule of Law which Sonoma County Superior Court is determined to ignore, Judge Rushing recently initiated a frontal assault in the form of a Vexatious Litigant initiative pursuant to CCP § 391. In upholding Judge Rushing in this matter, the Order of April 17, 2009 grossly distorts California's Vexatious Litigant Law. The Order concedes (at 6:4-

5): "Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases." Yet the Order to Show Cause by Superior Court Judge Elaine Rushing, treats Defendants' five discretionary appeals, in the still ongoing selfsame unlawful detainer case, as five separate cases "all of which have finally been determined against you."

There is nothing in ANY of these denials of discretionary appeals, which remotely approaches the "law of the case" definition for finality in an ongoing lawsuit (*People v Shuey* (1975) 13 Cal 3d 835, 841). The one-judge Court of Appeal rulings (A121269, A123226 & A123622) say only: "The petition for writ of mandate is denied." Like Supreme Court rulings: "The petition for review is denied." (in S163276 & S168827), this is never a disposition on the underlying merits under

California law, only a denial of extraordinary procedural relief per CCP § 1086.

C. Off-The-Record Frozen Asset Turnover

The "part of the iceberg above the water line" with respect to Defendant's $10,118 turnover grievance is noted in our April 20, 2009 Petition for Certiorari:

> At the November 20, 2007 Claim of Exemption hearing re the $10,000 fees judgment, Charles Jensen cited nothing to contradict the holding of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, 654-655, and CCP Sec 917.1(d) that a judgment consisting only of attorney's fees and other costs was not enforceable during the pendency of an appeal, without the appellant having to post an undertaking (appeal bond). It turned out that Charles Jensen's ground for opposition was an attempt to do an end run around CRC 8.750(a) that requires Notices of Appeal to be liberally interpreted in favor of their sufficiency. In spite of James Parker's totally unambiguous support for Defendants' appeals from the $10,000 attorney's fees award, Charles Jensen was able to convince Judge Rushing that Defendants' appeal from the initial award of the $10,000 should be ignored, because it was vacated and reinstated after the appeal. This is a direct contradiction

> of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. Charles Jensen convinced Judge Rushing to disregard Defendants' appeal from the renewed award of the $10,000 on the ground that only Defendant Halliwell had signed it. This quibble is rejected in *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641. Judge Rushing further trampled on the rule of law by refusing to allow James Parker any opportunity to respond to Charles Jensen's grounds, once they had been disclosed at the hearing. This was a direct violation of CCP Sec 703.580 (a) & (c).

Appellants' November 19, 2008 Petition for Mandamus to require a rehearing notes:

> James Parker also cited another aspect of Charles Jensen's effort to deprive him of a fair hearing: "In his opposition, he stated no argument [against my claim of exemption]. He just stated he was opposed to it." (Transcript at 481:8-14). In Defendants' appeal from similar tactics used by Charles Jensen earlier in the case, their December 24, 2007 brief cited *Hall v Superior Court (*1983) 133 Cal. App.4th 908, 918-919, where the Court of Appeal rejected similar procedural maneuvering which "places an unduly onerous burden on defense counsel to do all that is required within such a short period of time." *Hall* notes: "Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law.

> When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the merits, then the policy, practice or rule must give way." (CI 2726:9-20) James Parker asked for a modicum of fairness at the November 20, 2007 hearing: "Defendant has a right to know what the argument is ten days in advance of any hearing so that he can supply a written opposition to whatever the – Mr. Jensen's argument is." Judge Rushing responded: "Wrong. Wrong, sir. Wrong. I just told you the only pleadings on a claim of exemption are the claim of exemption and the opposition and that's it." (Transcript at 481:15-21)

Appellants' November 19, 2008 Petition for Mandamus to require a rehearing notes:

> One of the most clearly fallacious interpretations of *Ziello v. Superior Court* (1999) 75 Cal.App.4th 651, is one that it turned out to be Charles Jensen's argument, that a premature notice of appeal is legally ineffective. *Ziello* itself says that "an appeal from the judgment enables review of the costs ultimately awarded; see *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 996" (75 Cal.App.4th at 655). The next page in *Grant, supra*, says that "there is a general rule that notices of appeal shall be construed in favor of sufficiency and the liberality with which appellate courts accept as timely an appeal filed too soon, i.e.

> before entry of judgment or order challenged." (2 Cal.App.4th at 997). (Id. at 19:1-9)

The Conclusion of James Parker's June 2, 2008 Brief in Support of His November 21, 2007 Appeal protests (at 15:10-22):

> Judge Rushing exercised her discretion over the conduct of proceedings in a way that violated *Jennings v Superior Court* (1967) 66 Cal 2d 867, 875-876, which holds that "discretion may not be exercised in such a manner as to deprive the defendant of a reasonable opportunity to prepare his defense." In fact, Judge Rushing seemed intent on following in the footsteps of the trial judge in *Gamet v Blanchard* (2001) 91 Cal.App.4th 1276, 1283 who was criticized by the Court of Appeal: "The judge's comments that he could 'jam' Gamet and that he wanted to 'keep the heat on,' when combined with the unexplained judgment dismissing the action shortly thereafter, seemed arbitrary and created the appearance of substantial unfairness."
>
> In setting aside CCP Sec 703.580(a) which allows amendments "in the interest of justice" and CCP Sec 703.580(c), which allows "production of other evidence, oral or documentary" in Exemption Claim proceedings, Judge Rushing herself was "wrong, wrong, wrong."

On the morning of November 21, 2007

Defendants took advantage of the fact that an unserved order can be appealed up to 90 days after it is issued, as per CRC Rule 8.751(a)(3). Their Notice of Appeal said: "Defendants James Parker and Michael Halliwell hereby appeal Judge Rushing's Order of November 20, 2007 AND her supporting Order of September 25, 2007 (which has never been provided to the parties, but simply signed and placed in the Case File.)" (CR-1204)

Defendants immediately filed a Claim of Exemption based on their having eliminated Charles Jensen's ground for Opposition (whether or not it was originally correct). James Parker's November 21, 2007 Claim of Exemption cited Appellate Branch actions which showed that James Parker had indeed already appealed the fees award, Judge Rushing determined he had not appealed, and it then continued:

> The Appellate Branch therefore has eliminated any argument that James Parker is not seeking appellate review of the fees award at issue. Thus the caption of the November 5, 2007 Notice of Time and Place for Filing of Briefs refers to the case as CHRYSANTHE E. PAXINOS, Plaintiff/Respondent, vs. JAMES PARKER, et al, Defendant/Appellants." *However, to "cut the Gordian Knot" in this case, James Parker has joined in a November 21, 2007 Notice of Appeal directed, inter alia, against Judge Rushing's Order of September 25, 2007. See attached copy of this Notice of Appeal, which unambiguously disposes of the claim that James Parker has not appealed from the judgment which is the basis of the levy that Charles Jensen is trying to enforce. Defendant/Appellant James Parker hereby reasserts his Claim of Exemption based on CCP Sec. 917.1(d) and Ziello v Superior Court (1999) 75 Cal. App. 4th 651.* (CR-1211)

Because Judge Rushing took off for the long Thanksgiving Day weekend without doing anything about the frozen $10,118 in the Sheriff's holding account, Defendants "beat her to the Court House" by FIVE DAYS, before she turned her attention to this matter. By this time she had NO arguable basis for jurisdiction, but this DID NOT keep her from

fulfilling her evident desire at the November 20, 2007 hearing. On November 26, 2007 she gave instructions to the Sheriff's Department, which caused Defendants' money to be turned over to Charles Jensen. (CR-2431) Of course, the Sheriff's Department has no access to court files, and assumed that Judge Rushing was acting within the scope of her authority.

> Judge Rushing took advantage of "soft spots" in the system of justice which she was able to exploit. 1) The Sheriff's Department does not forward a Claim of Exemption to court until an Opposition is filed; since Charles Jensen never filed an Opposition to Defendants' November 21, 2007 Claim of Exemption, Judge Rushing felt justified in ignoring a document (our Claim of Exemption which the Sheriff was holding onto) that was not in the files. But she certainly knew about it, according to the Sheriff's Department (as Defendants were told when the Sheriff finally agreed to "give up" the paperwork on this matter, six months after the events described here, and provided a November 21, 2007 Date-Stamped copy of the Claim of Exemption from their files). 2) There is NO proof of service in the files for Judge Rushing's September 25, 2007 fees

award to Charles Jensen, for the simple reason that this judgment was never served on the parties. Nevertheless, Judge Rushing inserted into her 11/07/2007 electronic docket entry describing the assignment of a reporter to the CLAIM OF EXEMPTION hearing and the date of hearing shown in Charles Jensen's 11/07/2007 Opposition, a false entry which states "NOTICE OF ENTRY OF JUDGMENT, SERVED 9/25/07" Had this been true, Defendants would not have been able to appeal Judge Rushing's September 25, 2007 $10,000 fees award, on November 21, 2007. Judge Rushing would have had a basis for claiming that James Parker had not signed an appeal from the $10,000 fees award (except that he did sign the appeal when the award was first made, which she chose to ignore). **3)** Judge Rushing "sanitized" her 11/20/07 Courtroom Minutes to avoid any mention at all of her grounds for ruling in Charles Jensen's favor on the Claim of Exemption. These Minutes explain in detail why Judge Rushing would not allow Defendant Halliwell to speak, or allow Defendant Parker to file anything to dispute Judge Rushing's circumvention of CRC Rule Sec 8.750(a). However, one would have no idea at all how this Claim of Exemption hearing differed from any other, from these Minutes. Thus there is no apparent inconsistency between Judge Rushing's ruling in Charles Jensen's favor and the basis for James Parker's November 21, 2007 Claim of Exemption.

Boddie v Connecticut (1971) 401 U.S. 371, 374 discusses the rule of law:

> Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a "legal system," social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society.

D. Order of Examination (OEX) Proceedings

Defendants had no choice, but to resist the disclosure of financial information demanded in OEX proceedings, to avoid repetition of the off-the-record judicial abuse discussed in Section C. There was NEVER the slightest justification in state law for such premature OEX proceedings. *Betz v Pankow* (1993) 16 Cal.App.4th 931, 938, points out a well

established rule:

> As a general rule, "the perfecting of an appeal stays [the] proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order ...." (§ 916, subd. (a).) The purpose of the rule depriving the trial court of jurisdiction in a case during a pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. (Defendants' Memorandum re December 19, 2008 OEX Hearing at 13:1-18)

Judge Boyd swept aside CCP Sec 916, without explaining why he did so: Judge Boyd and Charles Jensen engaged in a colloquy which set forth their statute-free, governing precedent-free, vision of how a trial court has discretion to enforce its orders before even the bottom rung of the appeal process has been completed. Judge Boyd starts by stunningly ignoring his own order of July 23, 2008:

> As we sit here today, there is no stay on the enforcement of that order that has been ordered by any court? (Transcript at 14: 26-28)

Charles Jensen repeats the unsuccessful line of argument he offered, when Judge Boyd was considering whether to issue his July 23, 2008 stay order:

> That's correct. There has been no noticed motion, no noticed hearing for petition. They are simply papers that are filed – sometimes a motion, sometimes a petition – with no hearing set, no filing fee and no setting by the clerk and no stay order. (Transcript at 15:1-5)

Judge Boyd ignores CCP Sec 916, and proceeds to validate Charles Jensen's framework: "So there is no barrier to the enforcement of that judgment today?" (Transcript at 15:6-7) Charles Jensen confirms: "That is correct." James Parker objects: "We disagree with that." Judge Boyd responds: "I heard your argument, sir, and I disagree with your argument." (Transcript at 15:8-11) (Defendants' Memorandum re December 19, 2008 OEX Hearing at 16:10-25)

Defendants' Emergency Update of their January 2nd Petition for Mandamus states:

> Judge Boyd's Order of December 22, 2008 gives this justification for asserting his authority to enforce the disputed fees judgment, before either the First District Court of Appeal or the California Supreme Court has decided whether to review this matter: "The stay previously issued by this court was specifically limited by its language to a hearing to be held in the Appellate Division of the Sonoma County Superior Court. That hearing has been held and the contemptor's appeal of the order of attorney's fees was denied." This does not appear to be a sound basis for, in essence, chopping off the top two rungs of the process of appellate review. Just because review is discretionary at this level, does not mean that a lower court judge is justified in invading the jurisdiction of either the California Court of Appeal or the California Supreme Court. IF THE CURRENT OEX PROCEEDINGS ARE NOT DESIGNED TO HAMPER JAMES PARKER'S ABILITY TO FULLY PROSECUTE HIS APPEAL, THEY CERTAINLY HAVE HAD THAT EFFECT. SENDING APPELLANT TO JAIL (WHEN THE TIMELINE FOR FUR-THER REVIEW IS SO SHORT) WOULD BE THE ULTIMATE INFRINGEMENT OF HIS RIGHT TO APPEAL. (Id. at 2:16 to 3:2)

Order of Examination Proceedings (OEX) have twice involved threats of a contempt of court jail sentence for exercising our State appellate rights. Only at the last minute did Judge Robert S. Boyd pull back (in his Orders of July 23, 2008 and January 20, 2009) from trying to enforce his unlawful orders (issued in violation of California Code of Civil Procedure Sec 916(a)). Recently James Parker was sent to jail for defending his right to file this Petition, and refusing to accede to flagrant violations of his right to Due Process of Law.

E. $20,720 Reading-Fee-Only Attorney Award

James Parker's November 5, 2008 Reply Brief re May 27, 2008 Appeal set the record straight re false claims in Respondent's Opposition. Defendant James Parker's Reply Brief re May 27, 2008 Appeal (2:11-18) discusses the relatedness *vel non* of fees awarded to any appeal:

> Charles Jensen engages in deliberate distortion of the issue by saying (LNT 4:17-19): "Appellant's claim that Respondent failed to cite each point that he prevailed on. This may be true. However, there is no requirement that respondent do so." Appellants point is that there is no reference at all to ANY point on which Respondent had prevailed, thereby obscuring the lack of linkage of the basis for his fees request to any work which he had done. Defendants have listed the main items in a normal fees request by a party who has prevailed on appeal, and shown that there is NO link to Charles Jensen's $20,720 fees request.

Defendant James Parker's Reply Brief re May 27, 2008 Appeal (3:2-22) observes:

> Without citing any supporting case or provision in the rental agreement, Charles Jensen contends (LNT 5:8-9): "Appellants are under the mistaken belief that Respondent did not prevail on 'any' contract claim." At the May 6, 2008 Hearing, James Parker referred to Clause #13 of the rental agreement which says: "If any legal action or proceeding be brought by either party **to enforce any part of this agreement**, the prevailing party shall recover, in addition to all other relief, reasonable attorney's fees and costs." (CI 276) Appellants' Notice of Appeal (at 150-151) cited clear governing precedents on this issue: *Exxess Electronixx v Heger Realty Corp.* (1998)

64 Cal.App.4th 698, 708 notes that "the question of whether to award attorney's fees turns on the language of the contractual attorneys' fee provision, i.e., whether the party seeking fees has 'prevailed' within the meaning of the provision and whether the type of claim is within the scope of the provision. (*Santisas v Goodin* (1998) 17 Cal.4th 599 at 602, 608-609, 617, 619.)" James Parker argued on May 6th: "it wasn't a contract issue, so he is not entitled to request us to pay for him." (Transcript at 13:7-9) Judge Rushing sidesteps this argument, without citing any supporting authority for her position or attempting to show how she reached this result in light of Clause #13 and the standards set forth in caselaw by Appellants in their filings. She refused to discuss the matter with James Parker, saying only: "That's my interpretation of the law. Another Court may disagree. That's why we have appellate divisions, et cetera." Judge Rushing gives no clue about the basis for her interpretation of the law, but whatever this basis is, IT MUST ADDRESS THE ACTUAL PROVISIONS OF THE RENTAL AGREEMENT.

Defendants' October 6, 2008 Analysis of May 6, 2008 Transcript (6:11-22) states:

> Since Judge Rushing had indicated she was not inclined to grant a postponement, James Parker tried to argue the merits of the fees request (by reminding Judge Rushing that

Plaintiff's counsel had never secured a jury finding of any contract violation, indeed he advised Judge Rushing that he was abandoning his effort to prove any cause at all: "I want to paraphrase a quote, but Charles Jensen walked away from any possibility of winning on a contractual claim or any other cause when on June 25th he relied, in front of you before the trial, [when potential jury instructions were being discussed] when he relied entirely on a landlord's right to evict at will. [After asking for forbearance as he tried to find this exchange in prior briefing, James Parker continued:] Judge Rushing said to Charles Jensen, 'I notice that in your motion you listed cause.' That's when he gave us the 60-day notice he said was for cause. And you reminded him of that and he responded, quote: 'That is correct, Your Honor.' You continued: 'Is that the theory you're proceeding on in the case?' Charles Jensen replied: 'It is not, Your Honor, simply because the code section says no cause is needed.'" (Transcript at 10:14 to 11:2) The ONLY case cited in Plaintiff's brief seeking $20,680 for reading Defendants' various filings, which relates to the work for which compensation is sought, squarely supports Defendants' position that contract claims are the only ones which may generate attorney's fees, and then only for the legal work performed in the defense of such claims: "When a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a

> provision for attorney fees, section 1717 entitles the successful party to recover reasonable attorney fees incurred in the prosecution or defense of those claims." *Scott Co. v. Blount* (1999) 20 Cal 4th 1103, 1109. (See Plaintiff's March 25, 2008 Brief at 7:15-19.)

Hsu v Abbara (1995) 9 Cal 4th 863, 873-874

discusses clear legislative intent:

> In 1987, the Legislature amended [Civil Code] section 1717 to its current form. (Stats. 1987, ch. 1080, Sec 1, p. 3648.) The Legislature replaced the term "prevailing party" with the term "party prevailing on the contract," evidently to emphasize that the determination of prevailing party for purposes of contractual attorney fees was to be made without reference to the success or failure of noncontract claims. (See, e.g., On v Cow Hollow Properties (1990) 222 Cal.App. 3d 1568, 1574.)

Hsu v Abbara cites an application of § 1717:

> One case, for example, involved cross-actions by neighboring landowners for breach of covenants, conditions, and restrictions (CC&R's containing an attorney fees provision. (Banks v Lucas (1992) 9 Cal.App.4th 365, 369): [In *Banks v Lucas supra*] because ultimately no relief was awarded to any party under the CC&R's, the Court of Appeal found, as a matter of law, that there was no party prevailing on the contract under section 1717.

(9 Cal 4th at 875)

James Parker's reasoning on the need for a party to show a contract violation to invoke a contractual provision for attorney's fees was directly supported by *Santisas v Goodin* (1998) 17 Cal.4th 599 at 602, 608-609, 617, 619. This governing precedent holds that "the question of whether to award attorney's fees turns on the language of the contractual attorneys' fees provision" and "whether the type of claim is within the scope of the provision." Judge Rushing cut James Parker off at this point, saying: "Okay. Mr. Parker, would you have a seat please." James Parker replied: "Well, I still have these other issues to address." Judge Rushing continued: "Okay, but there's a 20-minute limit on law and motion and we have exceeded that. If you have just a quick wrap up you can do that." (Transcript at 15:19-25) Judge Rushing's imposition of a 20-minute limit in

these circumstances violated *Schweiger v Superior Court* (1970) 3 Cal 3d 507, 514 which holds:

"Certainly the interest in preserving the summary nature of an action cannot out-weigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the 'tail wagging the dog.'"

Our Motion for Rehearing re Appellate Order of December 5, 2008 (13:17 to 14:19) says:

> Without EVER tying A SINGLE WORD in any document he demands to be paid for reading to ANY ruling in his favor, or ANY work product he produced in the course of Appeal proceedings, or ANYTHING he said on May 6, 2008 in the course of persuading Judge Rushing to sign the totally unexplained $20,720 fees award he handed to her, or ANYTHING he said at the appeal hearing, Charles Jensen gives this (in his motion for Attorney's Fees) as the sole basis for ANY of the $20,720 he has managed to convince Judge Rushing (and so far the Appellate Branch) to approve:
>
> > Defendant's forced plaintiff's counsel to read all of his papers. Unfortunately

> counsel was not in a position to assume they were all a joke. An old Irish saying states "even a blind pig can find a truffle every now and then." These were not easy papers to read either. The arguments, and the term is used loosely, were disorganized and incoherent at best.

Defendants' October 6, 2008 Analysis of May 6, 2008 Transcript defends our filings:

> Judge Rushing ruled: "I have – as I said, you wrote a very long opposition to their motion, and this has to do with post trial attorney's fees. And you have filed, according to them – over 2,000 pages of documents post trial. That may well be. I didn't count them all." (Transcript at 12:10-13) (Id. at 7:20-21) James Parker responded: "Mr. Jensen is essentially arguing that he deserved $20,000 for just reading our briefs. But he forced us into writing such extensive briefs because he was attacking and feinting all different ways and we had to research and protect all our flanks, our back, our front, and it required presenting all these briefs just to protect our legal rights. He forced us into it. We didn't want to do it. We could have done other things with our lives. But now he wants $20,000 for the privilege of doing – of reading what he forced us into doing." (Transcript at 15:27 to 16:8) (Id. at 9:13-16)

Downey Cares v Downey Community Development Commission (1987) 196 Cal.App.3d 983, 994, observes:

> The trial court's exercise of discretion will not be disturbed unless the appellate court is convinced the award is clearly wrong, since the experienced trial judge can best determine the value of professional services rendered in that judge's court. (Serrano v Priest (1977) 20 Cal 3d 25, 49).

In the present appeal, this question springs to mind: "What professional services?" There is not one word Charles Jensen has uttered in any hearing transcript or a single passage in any brief that in any way reflects what he has gleaned from the documents, he wants $20,680 for having read. Section 16 of Defendant Michael Halliwell's Opening Appeal Brief quotes as close to a consideration of the underlying merits as took place when Judge Rushing considered the award of attorney's fees which is the basis for this appeal:

> At the May 6, 2008 hearing James Parker protested to Judge Rushing: "But the point here is he's never – he's never controverted with law any of the citations that we have – that we've briefed him on. All he said is they're dribble [Jensen's exact word], nonsense and whimsy; so I would like to ask the Court to ask him what percentage of those citations that were issued – what fraction are whimsy, dribble and nonsense?" Judge Rushing replied: "Okay, Mr. Parker, I'm not going to ask that question." James Parker continued: "One last thing, then. Okay. I would like to ask one more question. Can he now cite any one citation that's whimsy, dribble and nonsense?" Judge Rushing replied: "I'm not going to force him to do that." James Parker then complained: "Defendants take exception to that because all he's – essentially all his argument is it's all garbage. He's never controverted a single one of our citations, and they are scholarly, and they're well documented." (Transcript at 17:9-24)

There is NOTHING else in the Order of December 5, 2008 (besides a recitation of when the appeal hearing took place and who attended) except "The trial court's attorney fee Order is **AFFIRMED.**" Except for the perfunctory references, *supra*, to "De novo review" and "abuse of discretion," the Order of

December 5, 2008 reads like the Appellate Panel used the Order which Charles Jensen gave to Judge Rushing to sign on September 25, 2007, as a line-for-line guide, with the only changes being the date and the composition of the Court.

Appellants' April 18, 2008 Petition (at 8:19 to 9:6) discusses how Charles Jensen refused to accept the $375 specified by Local Rule 2.2E for the prevailing party in a normal court trial (*he demanded an UNREVIEWABLE $4,000* even though, when faced with Judge Nadler's refusal to allow a jury trial because the address of the property was put in the wrong place on Defendants' form UD-150, Defendants were willing to voluntarily leave the property). For fighting against this $4,000 unreviewable fees award for giving up, Defendants were eventually saddled with $10,000 in fees by Judge Rushing, even though *Santisas v Goodin* (1998) 17 Cal 4th 599, 614,

states: "We are satisfied that concern for the efficient and equitable administration of justice requires that the parties be left to bear their own attorney's fees." *International Industries v Olen* (1978) 21 Cal 3d 218, 224-225, explains: "*The purpose of litigation is to resolve participant's disputes, not compensate participating attorneys. Our courts are sufficiently burdened without combat kept alive solely for attorney fees.*")

Blum v Witco Chemical Corp. (1987) 829 F.2d 367, criticizes this sort of phenomenon, where a battle over fees overshadows everything else in a case:

> As we have warned, the inquiry into the proper fee should not "assume massive proportions...dwarfing the case in chief." *Lindy Bros. v Am Radiator & Standard Sanitary Corp*, 540 F.2d 102, 116 (3rd Cir 1976)

Mills v Eltra Corp. (1981) 663 F.2d 760 also cites the *Lindy* warning about fees proceedings "dwarfing the case in chief" and decries a situation

in the case under review where "The fee proceedings have become the main event rather than the side show."

Also, Charles Jensen ignores Defendants' citations of ethical limits on fee payment.

> *Attorney's Oath*: "I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law." (CR-359:11-13)
>
> *Clark v Millsap* (1926) 197 Cal 765, 785: "A court may refuse to allow an attorney any sum as an attorney's fee [for tactics] tainted with fraud. 'Fraud or unfairness on the part of the attorney will prevent him from recovering for services rendered, as will acts in violation or excess of authority, and acts of impropriety inconsistent with the character of the profession and incompatible with the faithful discharge of its duties.' (6 Cor. Jur. 722, 723.)" (CR-359: 13-16)
>
> *Goldstein v Lees* (1975) 46 Cal.App.3d 614, 618 notes the relevance of ethics to fees: "It is settled in California that an attorney may not recover for services rendered if those services are rendered in contradiction to the requirements of professional responsibility. (*Clark v*

Millsap (1926) 197 Cal 765, 785)"

James Parker's November 20, 2008 oral remarks, which give the details of eight false statements in Respondent's October 27, 2008 Opposition Brief (Transcript at 13:27 to 17:3), and the lie in Charles Jensen's oral statement (the details of which are set forth in our January 2, 2009 Mandamus Petition at 53:16 to 54:8) which Respondent's Opposition does not try to explain, except to say: "Counsel for Respondent has never been caught lying." James Parker further quoted Respondent's Opposition: "While counsel for respondent has read the appellants' Index of Plaintiff's Misrepresentations and Rules Violations, there was nothing in it worthy of response." James Parker then asked: "Does Charles Jensen wish at this time to explain any of his latest alleged misrepresentations, or cite anything incorrect in our

previous charges of professional misconduct?" When Charles Jensen said nothing, James Parker said to the Court: "Your Honor, I just want it to be said that there was no response." Judge Chouteau responded: "I am indicating there should not be a response." (Transcript at 17:7-23)

The Court of Appeal in *Denton v Smith* (1951) 101 Cal.App.2d 841, 845 ruled:

> "Fraud or unfairness on the part of the attorney will prevent him from recovering for services rendered; as will acts of impropriety inconsistent with the character of the profession, and incompatible with the faithful discharge of its duties." (6 Cor.Jur.722, 723.)" (*Clark v Millsap* (1926) 197 Cal 765, 785) *Plaintiff Denton's conduct with respect to the matter of the fees herein cannot be said to meet the standard of fairness required to entitle him to recover on the contract sued upon*. (Emphasis added.)

Clancy v State Bar (1969) 71 Cal 2d 140, 148, equates lies and hiding part of the truth:

> In *Grove v State Bar* (1965) 63 Cal 2d 312, 315 it was held that concealment can mislead as

> effectively as a false statement. "No distinction can therefore be drawn from among concealment, half-truth and false statements of fact." Therefore there is no merit to petitioner's contention that his misconduct does not warrant disciplinary action.

Crayton v Superior Court (1985) 165 Cal.App. 3d 443, 447 observes:

> In *Di Sabatino v State Bar* (1980) 27 Cal 3d 159, 162-163, an attorney was disciplined. . . The failure was determined to constitute a "concealment of information which misled" the court. The court founded its holding upon the special statutory duty of attorneys (Bus. & Prof. Code, Sec 6068(d)); Rules of Prof. Conduct, rule 7-105) not to mislead a court. The court observed that "concealment of material facts is just as misleading as explicit false statements. . . ."

As if to rub salt into the wound, Charles Jensen was awarded a fee of $282 for reading the filing which cited this case (which Judge Rushing flouted throughout proceedings):

> Although discretion is vested in the trial judge, that discretion is not unfettered. It cannot be exercised arbitrarily, but must be an impartial discretion to be exercised in

> conformity with the spirit of the law and in a manner to subserve the ends of substantial justice. (*Longshore v Pine* (1986) 176 Cal.App. 3d 731, 737) (CR-363:16-18)

Defendants pointed out (in Exhibit #43 at CR-209 and in their July 16, 2007 analysis at CR-198) another California Supreme Court decision which barred Charles Jensen's tactic, of using exorbitant fee demands as a device to form a basis for demanding even more, should the opposing party fail to capitulate:

> It is ironic that Charles Jensen cites a case in support of his request for an award of full attorney's fees (*Serrano v Unruh* 32 Cal 3d 621, 1982) that contains a warning that appears applicable to the tactics he has used in MCV 191306 – about those who "force their opponents to a Hobson's choice of acceding to exorbitant fee demands or incurring further expenses by voicing legitimate objections." (32 Cal 3d at 635.)

Defendant Halliwell's Reply Brief re May 27, 2008 Appeal (9:22 to 10:5) says:

> There is not a single instance in any

> transcript, Courtroom Minutes, or ruling by Judge Rushing which in any way addresses Defendants' documented complaints about the evasive and sometimes illegal tactics used by Charles Jensen. Nor does Charles Jensen cite a single instance in his own brief of any allegedly false charge made by Defendants. Charles Jensen's only reply to the misconduct charges he wants to be paid for reading, is that it does indeed take many pages to establish the context, set forth Respondent's various sneaky maneuvers and cite caselaw which precludes this sort of behavior.
>
> Parker's May 5 Affidavit re May 5, 2008

Tentative Ruling (2:21 to 3:9) notes:

> Charles Jensen's demand for $20,000 in fees for having to read the "irreverent dribble" produced by Defendants, because "even a blind pig can find a truffle every now and then" was timed for maximum disruption of Defendants' appeals to the First Circuit Court of Appeal and the California Supreme Court. In their April 30 (1:02 PM), 2008 Petition to Presiding Judge Knoel Owen to Postpone the May 6, 2008 Hearing on Attorneys Fees, Defendants argued that before any award of fees for opposing Defendants' appeals should be considered, the appeal briefing schedule abrogated by the Order of February 5, 2008 should be reinstated and completed.
>
> During the time when briefing was suspended

on the appeal challenging the validity of Judge Rushing's delivery of $10,118 of Defendants' assets to Charles Jensen, Plaintiff filed another ($20,720) attorney's fees motion and (after Sonoma County Superior Court Presiding Judge Knoel Owen ignored Defendants' April 30, 2008 motion seeking to postpone the fees hearing, until Defendants were under less pressure from the demands of appealing jury trial issues to the State Supreme Court) Judge Rushing awarded the full amount, that Charles Jensen requested for reading Defendants' briefs relating to issues, still unresolved in the appeal process.

Defendants reminded Presiding Judge Owen in an October 14, 2008 petition:

> On April 30, 2008, in full compliance with every-thing the window clerks asked of them, Defendants filed their "Petition to Presiding Judge Knoel Owen to Postpone May 6, 2008 Hearing on Attorneys Fees." The window clerks informed Defendants to check Box 73 in the Hall of Justice for a response. They

> checked Box 73 repeatedly up until the May 6, 2008 hearing was upon them, but no action was apparently taken on this motion.
>
> With various deadlines impinging on them from different directions, Defendants are in no position to try to untangle what is going on behind to scenes to disadvantage them in their efforts to compile an appropriate record of the factual and legal aspects of this case. When one considers the palpable evasiveness in the orders issued by Judges Rushing and Chouteau in this matter and the No Process of Law which is available at their hearings, *it is hard to see how a reasonable person aware of the facts in this matter would conclude that the required (by judicial ethics canons 1 and 2A) "appearance of impartiality" has been maintained by the Sonoma County Superior Court.* In addition to the other duties of a Presiding Judge, CRC 10.603(c)(4)(A)(i) provides: "The presiding judge must notify the Commission on Judicial Performance of a judge's substantial failure to perform judicial duties." *Presumably this mandate implies the authority to keep the appearance of improper favoritism from growing to even larger proportions in the case at bar, by taking necessary corrective action.*

The timing and scope of the $20,720 fees hearing on May, 6, 2008, was a deliberate effort to interfere with and punish Defendants' efforts to

appeal a prior attorney's fees award. Such reprisals are contrary to federal policy, for reasons which are fully applicable to State legal proceedings. Thus, *Webster v Sowders* (1988) 846 F.2d 1032, 1040 observes:

> Just as it appears clear that a trial judge cannot sanction a party or lawyer for taking an appeal, we do not believe that it is proper here for the District Judge to threaten to sanction the defendants or their attorney for filing a motion to stay his order pending appeal on the grounds that the underlying appeal is frivolous. The only purpose of such a threat is to prevent an appeal. Appeals of district court orders should not be deterred by threats from district judges.

REASON FOR GRANTING CERTIORARI

The logical and orderly way of handling a broad-gauged assault on the Rule of Law by a State Superior Court (where that Court's opinions have been totally evasive, and the Plaintiff in the lawsuit has refused to respond to any of Defendants charges in the briefing opportunity provided by the State's

highest court), is a remand to a Federal District Court to compile a reliable factual record. An essential preliminary to a District Court remand is granting Certiorari, to prevent the $20,720 Reading Fee here from becoming unreviewable. There is no prospect that the Sonoma County Superior Court will cease its obstructionism on its own.

Supreme Court, U.S.
FILED
09-172 MAY 19 2009
OFFICE OF THE CLERK

136

(2)

No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME I

Michael J. Halliwell & James F. Parker
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May 18, 2009

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FOREWORD

The relief sought in Defendants' May 18, 2009 Petition for Certiorari is protection of the federal Due Process and Equal Protection rights violated by a $20,720 attorney fees award – for simply reading Defendants' various briefs, with no connection to any written (responding brief) or oral (discussion at trial court or appeal hearings) work product, and having no connection to any issue where Plaintiff had been found to be the prevailing party.

This aspect of appeals which arose from *Paxinos v Halliwell & Parker* is greatly complicated by the off-the-record turnover of $10,118 of Defendants' funds, at a time when the trial court had lost any semblance of jurisdiction to act on this matter (and which was not discovered by Defendants until three months afterwards). The evasions and subterfuges involved in this turnover are set forth in Section C.

The two-front squeeze on Defendants during most of the 11-month time period where the $20,720 fees award was considered in Superior Court and appeals from this award, was further complicated by OEX (Order of Examination) proceedings whose purpose was premature enforcement of the $20,720 award.

The eight OEX hearings which Defendant James Parker was dragged through, and rulings by Judge Robert S. Boyd (of July 23, 2008, January 20, 2009 and April 17, 2009) which belatedly admitted that he had acted prematurely, are the focus of Section D.

The focus of Section E is the unexplained May 6, 2008 Fees Award by Trial Court Judge Elaine Rushing, the various maneuvers leading up to the unexplained upholding of this award by the Sonoma County Superior Court Appellate Branch, and the unexplained denials of discretionary review by the California Court of Appeal on January 2, 2009 (in A123622) and the California Supreme Court on February 18, 2009 (in S169634).

C. Off-The-Record Funds Turnover Dispute

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James Parker, Defendant pro se
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707-795-5526 jayfrank@myway.com # MCV 191306

FILED
NOV 21 2007

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants' November 21, 2007 Exemption Claim (How Circumvented)

Contemporaneous facts re 11/26/07 directive

There is no aspect of the case where precisely what the court did is more important, than in the turnover of $10,118 of Defendants' money which the Sheriff was holding for safe keeping, to Plaintiff BEFORE we were able to enforce the automatic stay required by Section 916(a) California Code of Civil Procedure. The key augmentation of a docket printout is listed at the May 7, 2008 point in this chronological listing (when a copy of this document was provided to Defendants, after three months of repeated requests). However, the rest of the document is non-controversial and is reproduced here.

The top line of the printout from the court computer says:

"11/26/2007 14:24 707-521-6756 Dept 19 PAGE 17"

Spliced in just below (almost overlapping the top line is:

"MCV-191306 PAGE 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CIVIL PROCEEDINGS AS OF 11/21/2007
PAXINOS V PARKER
06/01/2007

HALLIWELL, MICHAEL (APPELLANT CIV DEFD)
PARKER, JAMES (APPELLANT, CIVIL DEFDNT)
PAXINOS, CHRYS. (JUDGMENT CRED, PLAINT)
(AT BLONSKI, KADIN)
(AT JENSEN, CHARLES T)"

In both the "Sheriff's version" and version Defendants downloaded in preparation for the November 20, 2008 hearing on the largest ($20,720) of Judge Rushing's fees awards, the text of the Courtroom Minutes which comes next, is the same (and have no suggestion of any activity by the court after 11/20/2007). However, in the Sheriff's version there is a large amount of white space at the bottom

of the page, where the following entries appear in the more current version:

"11/21/2007, NOTICE OF APPEAL 12/03/2007 at 8:00 am CCO, DESIGNATIONS AP HALLIWELL, MICHAEL J; AP PARKER, JAMES; RS PAXINOS, CHRYSANTHE E; PRO PER APPELLANT; NOTICE DESIGNATING A REPORTER'S TRANSCRIPT – 12/07/2007 at 8:00 am CCO, COUNTER DESIGNATIONS; AP HALLIWELL, MICHAEL J; AP PARKER, JAMES. 11/26/07 OPENING BRIEF FILED; RESPONDENT'S BRIEF DUE 12/17/06 – 12/18/2007 at 8:00 am CCO, BRIEFS; AP HALLIWELL, MICHAEL J."

There is a clear pattern in the sending out of Notification of Filing of Notice of Appeal. When it does not appear to have jurisdictional significance, the Notification goes out almost immediately (on the same day for 7/24/07; the next day for 8/29/07 and 10/17/07), but when the Notice of Appeal interferes with Judge Rushing's intended course of action it goes out much later (6 days later for 9/26/07, so as to leave the field clear for Charles Jensen's 10/02/07 Writ of Execution; 6 days later for 11/21/07 so the Sheriff will have time to turn over the money seized

by the Writ of Execution on 11/27/07). Judge Rushing's handling of her responsibility as Supervising Judge of the Civil Division is about as subtle as President Clinton's bombing a "terrorist" aspirin factory in Sudan, on the day of a key Impeachment vote in the House of Representatives. Even worse is Judge Rushing's bogus docket entry for 11/7/07: "NOTICE OF ENTRY OF JUDGMENT, SERVED 9/25/07" If Judge Rushing had not simply signed her order and placed it in the file, Defendants' would have been too late with their November 21, 2007 Notice of Appeal. But since a 90-day deadline is applicable to unserved orders, Judge Rushing is in the same position as a motorist who speeds up when the light turns amber, and collides with a couple of cars who are going through after their light turns green. There is NO proof of service to support Judge Rushing's bogus 11/07/2007 claim, which is one of the reasons why Appellate Branch Presiding Judge Chouteau has stonewalled Defendants' File Integrity Appeal, and manipulated appeal schedules to create two and three front situations for Defendants.

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY Courtroom 19
Date: November 26, 2007 Chris Reynoso,
Hon. ELAINE RUSHING, Judge Deputy Clerk

CHRYSANTHE PAXINOS, Action # MCV-191306
Plaintiff vs. **DIVULGED** MAY 07 2008
JAMES PARKER, (Correct Copy of Original on File)
et al, Defendants ISSUE: CLAIM OF EXEMPTION
PROCEEDING: 11/20/07 Law & Motion Calendar
Court's previously published tentative ruling:
Appearance Required Counsel Charles Jensen is present on behalf of Plaintiff Chrysanthe Paxinos. Defendant James Parker, self represented party, is present. Defendant Michael Halliwell, self represented party, is present. Court notes that this motion relates to Defendant James Parker only, and not to Defendant Michael Halliwell. Also, the Court notes that since Defendant Halliwell is not a licensed attorney, he may not speak on behalf of Defendant James Parker. Additionally, the Court states that when a Court considers a claim of exemption, the only documents that are under consideration with regard to the motion are the claim of exemption itself and the notice of opposition. Defendant Parker raises issue with Court with regard to Defendant Halliwell not being able to speak on his (Parker's) behalf, alleging Mr. Halliwell has standing in this action, and therefore should be allowed to speak. Court DENIES Mr. Parker's motion (stating that Mr. Halliwell is not a licensed attorney). Upon conclusion of oral argument, Court orders the following: Court DENIES Claim of Exemption of Defendant James Parker. **RECEIVED 2007 NOV26**
(Elaine Rushing)(11-26-07)**SonomaCounty Sheriff**
HON. ELAINE RUSHING **Civil Bureau 3:17 PM**

James Parker & Michael Halliwell
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ENDORSED
FILED
JAN 22 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Complete Transcript Appendix Pursuant to CRC Rules 8.706(C) and 8.766

[Since the Appellate Branch hearing was scheduled for January 24, 2008, it was obviously too late on January 22, 2008 for supplemental briefing based on the transcripts which Defendants filed here. They argued in behalf of their appeals where these transcripts were of vital importance.] This appendix is in support of full briefing and a separate hearing (perhaps on March 27th, April 24th, May 22nd, and June 26th) for the aforementioned three later appeals, and the one noticed on November 21, 2007, which is in fact already slated for consideration on June 26, 2007).

[Judge Rushing never served her Order of September 25, 2007 and disregarded Defendants' September 26, 2007 Notice of Appeal from her September 25, 2007 bench ruling, which appears (at CR-1841 to CR-1842) in the transcript filed here (at 475:27 to 476:2):]

> **The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,00 in attorney's fees against Mr. Parker only.**

Complete Transcript Appendix says (at CR-1809):

It is hard to understand on what basis Judge Rushing provided a signed copy of her order for $10,000 in attorney's fees to Plaintiff's counsel only, but she apparently did this to facilitate Charles Jensen's "stealth" attempt to do an end run around the governing precedent (*Ziello v Superior Court* (1999) 75 Cal.App.4th 651) barring enforcement of fees-only judgments pending resolution of an appeal.

[Judge Rushing operated even further "below the radar" in her handling of Defendants' Claim of Exemption re the $10,000 fees award. Defendants did not find out how the $10,000 turnover had been

accomplished, until May 7, 2008 when the Sheriff's Department finally agreed to provide the document Judge Rushing used (with nothing ever appearing in the case file to indicate what she had done). It is now clear that Judge Rushing acted in accordance with Charles Jensen's instructions at the November 20, 2008 hearing (CR-1848), in this transcript excerpt (482:13-28): Here, James Parker's testimony is *italicized*, Charles Jensen's remarks are underlined, and Judge Rushing's are in **bold type.**]

> JAMES PARKER: *The August 30th appeal does cover the $10,000 award of fees, and my name is on that appeal.*
>
> JUDGE RUSHING: **The order is September 25th.**
>
> CHARLES JENSEN: That is correct, Your Honor. And it's my understanding, and I believe I'm correct, that you can't file an appeal for anything that may conceivably happen at some time in the future.
>
> JUDGE RUSHING: **Yes, I agree. So the Claim of Exemption is formally denied at this point.**
>
> CHARLES JENSEN: Your Honor, procedurally madam clerk is to send a minute order to the sheriff.
>
> JUDGE RUSHING: **Correct.**

CHARLES JENSEN: Then no formal order will be required of this Court.

JUDGE RUSHING: **She will.**

CHARLES JENSEN: Thank you, Your Honor.

[Defendants' Analysis notes (at CR-1815-1817).]

Charles Jensen at no point (not in his Opposition to our Claim of Exemption as required by CCP Sec 703.560, not at the hearing on the Claim of Exemption, nor in any subsequent filing) alleged that the bank account being levied was not exempt from attachment for a judgment consisting solely of costs and/or attorney's fees as provided in CCP Sec 917.1(d) as applied (see CR-1453 to CR-1457) by *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655; *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303; and *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475). CHARLES JENSEN'S BARE STATEMENT THAT THE CITED STATUTE AND SUPPORTING AUTHORITY "DO NOT APPLY TO JAMES PARKER" ALSO CLEARLY FAILED TO SATISFY HIS OBLIGATION UNDER CCP Sec 703.560(b) requiring that his opposition shall include: "A statement of the facts necessary to support the allegation." Rather than seeking a

default judgment, pursuant to CCP Sec 703.580(f) on account of Charles Jensen's violations of CCP Secs 703.570(b), 703.560(a) and 703.560(b), Defendants invoked the power of the Court to consider amendments to filings, pursuant to CCP Sec 703.580(a) "in the interest of justice." This avoided requiring a court which is faced by insufficient pleadings, pursuant to CCP Sec 703.580(c), to "order the hearing continued for the production of other evidence, oral or documentary."

As she has done on every occasion where black letter law pushes her in a direction she does not wish to go (JUDGE RUSHING NEVER CITED A SINGLE SUPPORTING CASE FOR ANY OF HER CHALLENGED RULINGS), Judge Rushing made up for by being emphatic, what she lacked in supporting authority. She continued: "**Wrong. Wrong, sir. Wrong. I just told you the only pleadings on a claim of exemption are the claim of exemption and the opposition and that's it.**" (Transcript at 481:19-21)

Dated: this 22nd day of January, 2008

Michael Halliwell

James Parker

James Parker & Michael Halliwell
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JAN 28 2008

No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Appellants' Notice to Presiding Judge Boyd re Circumvention of Claim of Exemption

The January 24, 2008 Appellate Branch hearing for *Paxinos v Halliwell and Parker* seemed to end on a procedural high note, as the parties were informed that disposition of the jury trial aspects of appellants' grievances would be by written opinion. Whatever the substantive decision, this cannot help but be of assistance to future litigants in avoiding the procedural traps which have plagued proceedings in this case. After some discussion of problems relating to the unavailability of transcripts for fees-related hearings (until long after filing deadlines) it was agreed that this aspect of the case would be reserved for a later appeal. However, an answer by Charles

Jensen at the very end of proceedings gave rise to concerns which have become ominous after further investigation. When asked whether "the property was still at issue" Respondent's counsel answered with words to the effect that "**they** never appealed the judgment" which forced their eviction. This is simply not true. Judge Rushing refused to consider defendants' motion for a mistrial or even allow it to be filed. Judge Rushing also refused to take cognizance of a more modest motion for a "stay of execution" (which was referred to Judge Von Der Mehden who denied it, based on a false affidavit which asserted that James Parker posed a threat to persons "identified at trial" who had lodged complaints against him). However, the July 24, 2007 Notice of Appeal (which encompassed all relief denied to Defendants before, during and in the immediate aftermath of the trial) does not apply to James Parker (according to Charles Jensen) because only Michael Halliwell signed the notice of appeal. This informational notice deals with an insidious and surreptitious application of Charles Jensen's "divide and conquer" doctrine in the "second front" (freezing and ultimately seizing $5,059 of Michael

Halliwell's money and an equal amount of James Parker's money) he opened at a critical juncture in pre-appeal briefing. (CR-1852:11-22)

Defendants felt that they had undone the damage done by the false assertion that prior appeals from Judge Rushing's (unexplained) award of $10,000 in fees to Charles Jensen "do not apply to James Parker" (CR-1179 to CR-1181) by filing a jointly signed notice of appeal CR-1204) seeking review of the unserved orders on this subject by Judge Rushing. (CR-1853:2-5)

There was not the slightest trace of activity by Judge Rushing in the Case File after the November 21, 2007 filing of Defendant's Claim of Exemption, and the only activity by counsel for Plaintiff was Respondent's (December 17, 2007) response to Appellants' Opening Brief. (CR-1853:15-17)

Judge Rushing's Courtroom Minutes (CR-1015) indicate that she placed an order in the file establishing Chrysanthe Paxinos as judgment creditor in the amount of $10,000 and James Parker as judgment debtor in like amount. Although no notice of this action was provided to Defendants, on September 26, 2007 they appealed (CR-710) the award of

$10,000 in attorney's fees to Charles Jensen on the basis of Judge Rushing's expressed intention (in order to facilitate the earliest possible preparation of a transcript for the September 25th hearing). Defendants also felt obliged to file an October 17, 2007 appeal relating to the integrity of court files (CR-1059), and in the process of preparing their designation of the record on appeal discovered the order (CR-1094) which Judge Rushing inserted in the file on September 25th. On October 25, 2007 the Sheriff notified James Parker of a levy against his bank account for $10,118 and his bank informed him of this on the same date (CR-1096). James Parker filed a claim of exemption on November 3, 2007 invoking CCP 917.1(d) and *Ziello v Superior Court* (1999) 75 Cal.App.4th 651 which preclude the enforcement of money judgments consisting only of attorney's fees and costs until AFTER appeals from such judgments have been resolved. (CR-1856:14 to CR-1857:5)

Charles Jensen's implication at the January 24, 2008 hearing (in his answer to Judge Hardcastle) that the really important financial issues had already been settled, caused Michael Halliwell to

recall what he had written on January 10, 2008 about Judge Rushing's attitude:

> Judge Rushing made it clear what her trusted source of information was, at the outset of proceedings, in this frank admission of judicial partiality. "I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up." (Transcript at 163:23-25)

Judge Rushing slavishly followed Charles Jensen's lead on the alleged invalidity of Defendants' August 29, 2007 appeal from the award of $10,000 in attorney's fees to Mr. Jensen. Was it somehow possible that Judge Rushing's determination to "deliver the goods" to Charles Jensen would cause her to ignore Defendants' appeal of November 21, 2007? James Parker used the contact number for the Sheriff's Department (acquired in connection with our Claim of Exemption filing) seeking to confirm that Defendants' $10,118 was still sequestered in the Sheriff's special account. The Sheriff's clerk who answered (but could supply no details) told us that our money was GONE, delivered to Charles Jensen on Tuesday November 27, 2007. Defendants' timely joint appeal from the Order of September 25th completely eliminated the

"James Parker has no appeal" (Transcript at 479:11) rationale for Judge Rushing's November 20th ruling. However, this made no difference to Judge Rushing, as she simply did what she indicated she would do on November 20th. (CR-1859:15 to CR-1860:9)

Because the rationale for ruling in Charles Jensen's favor had been eliminated by a timely and totally unambiguous appeal by James Parker and Michael Halliwell from the Order of September 25, 2007, Judge Rushing eliminated ANY reference at all to the grounds for her decision from her 11/20/2007 Courtroom Minutes. Although the Minutes start with this clear statement: "ISSUE: CLAIM OF EXEMPTION" only one of 22 lines in the Minutes address this substantive issue, saying: "Court DENIES Claim of Exemption of Defendant James Parker." (CR-1861:6-12)

When one Googles "Judge Elaine Rushing judicial misconduct" [Defendants were led to] Commission on Judicial Performance Inquiry #177 Decision and Order imposing public censure." (CR-1863:16-18)

[Inquiry #177 quotes include these passages:]

Judge Rushing's conduct violated the Code of Judicial Ethics, canons 1 (failing to observe high

standards of conduct so that the integrity and independence of the judiciary will be preserved) and 2A (failing to comply with the law and failing to act in a manner that promotes public confidence in the integrity of the judiciary), and constituted prejudicial misconduct. (CR-1864:19-21) When Firefighter Ramos found Judge Rushing sitting in the driver's seat, Judge Rushing falsely told him that she had not been the driver. She said that an unknown woman had been the driver, and then that an unknown man had been the driver. (CR-1865:3-5)

She said she had been sitting in the back seat (even though the car had no back seat). When Officer Hole-man asked Judge Rushing where the keys to the car were, she first told him that she thought they were in the car, and then said that the male driver had taken the keys with him when he and the woman had left the scene on foot, walking back toward the friend's house. (CR-1865:9-12)

Judge Rushing identified herself to Firefighter Ramos by showing him her Sonoma County Court Judge identification badge. When Judge Rushing was asserting her false story that she was not the driver to Officer Holeman, she repeatedly told him that she was a superior court judge in Sonoma County. She also repeatedly requested that Officer Holeman call her husband who, she informed the officer, was an appellate court justice. (CR-1865:21-23)

Judge Rushing then told Officer Holeman that in her courtroom she goes against court policies for CHP and other officers, and that he should

extend that courtesy to her. She persisted in telling Officer Holeman that she was a superior court judge and that her husband was an appellate court justice. (CR-1866:12-14)

Judge Rushing's conduct following her attempts to drive while drunk is particularly egregious. Falsifying stories to persons seeking to offer early assistance, and to emergency personnel and the arresting CHP officers reflects poorly on Judge Rushing's integrity and without doubt seriously negatively impacts the public perception of her, and of the judiciary in general. Judge Rushing left the scene after colliding with a residential wall, lied to citizens offering her initial assistance, and provided a fabricated story to emergency personnel and the investigating officers that she was not the driver. None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v Commission on Judicial Performance* (1989) 49 Cal. 3d 826, 865, that honesty is a "minimum qualification" expected of every judge. Judge Rushing also repeatedly invoked her judicial office and that of her husband in an effort to avoid arrest and otherwise receive preferential treatment. (CR-1867:16-23)

[But Judge Rushing "copped a plea" as follows:]

Judge Rushing's veracity and integrity have been seriously impugned. Her attempts to obtain preferential treatment, however, were unsuccessful. There was no on-bench misconduct and there was no direct adverse affect on the administration of justice per se. Several people, primarily from the

legal community, have submitted letters in support of Judge Rushing remaining in judicial office. (CR-1868:6-18)

Bob Egelko reports in the June 9, 2006 *Chronicle*:

Rushing 58, was appointed by Gov. Pete Wilson in 1992 as the first woman on the Superior Court bench in Sonoma County. She had practiced business law since graduating with honors for UC Hastings College of Law in 1979. She last appeared on the ballot in 2004 and won a six-year term. (CR-1868:18-20)

[We also cited more judicial abuses (CR-1869:11-21):]

Section 1. Attorney's-fees-only judgments are not enforceable while an appeal is pending cites *Nielsen v Stumbos* (1990) 226 Cal.App. 3d 301, 303-304; *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475; and *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655. **Section 2. Lacking any supporting legal authority, Judge Rushing blocks Defendants' case** cites *People ex rel Dept. of Public Works v Malone* (1965) 232 Cal.App. 2d 531, 537; *Gray v Justice's Court* (1937) 18 Cal.App. 2d 420, 423; *Paradise v Nowlin* (1948) 86 Cal.App.2d 897, 898 and *Wilde v Superior Court* (1942) 53 Cal.App. 2d 168, 173. **Section 3. Judge Rushing's effort to hide behind initial pleading limitations to duck issues** cites the parts of CCP Section 703.520 et seq. Judge Rushing ignored in her ruling. **Section 4. Judge Rushing's probable method of transferring funds on November 27, 2007** cites Judge Rushing's announced intentions on November 20, 2007, which she appears to have

followed (while leaving no trace in the official record) in spite of legal obstacles she chose to ignore.

[Our plea to Judge Boyd ends (CR-1880:1-6):]

Is it really possible that a trial court judge would knowingly try to vitiate Defendants' legal rights in these circum-stances and resort to evasions and misrepresentations to conceal what she was doings? For a judge without a record of violating judicial canons of ethics, one would presume not. Consider-ing Judge Rushing's actual history, in *Paxinos v Halliwell and Parker* and before that, the best approach may be that of Judge John Sirica in the Watergate matter: **Follow the evidence wherever it leads.**

Dated: this 28th day of January, 2008

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SUBMITTED
FEB 4 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Appellants' Petition to Presiding Judge Owen re Changed Appeal Record Designation Policy

The integrity of Court Files has been an issue from the outset of this case. In proceedings before Judge Gary Nadler, Plaintiff's Proofs of Service and Form UD-150 were NOT in the Case File when inspected, photocopied and initialed by window clerk "C.O." on June 11, 2007. These documents turned up much later (inserted as if they had been filed on June 6, 2007) and played a key role in Judge Nadler's denial of a continuance which was probably the most decisive factor in our case. Because of this history, Defendants were allowed to supply copies of all documents marked with Case Record sequential numbering for use in their appeals. Chronological Index (CI) 00460 to 00836, is our first such

Designation; CI 01124 to 01260 is our second appeal; CI 01481 to 01725 is for our third appeal; CI 01734 to 02014 is for our fourth appeal. At the behest of Judge Elaine Rushing, on November 27, 2007 the County Sheriff turned over $10,118 of our money to Charles Jensen not-withstanding our November 21, 2007 Claim of Exemption and the failure of Charles Jensen to file any Opposition to our November 21st Claim. From the afternoon of November 21, 2007 through the afternoon of December 17, 2007, Defendants made several inspections of the Case File, and found nothing related to this matter. We learned of this turning over of our funds on January 25, 2007, but the file was unavailable then and the docket shows no activity not related to appeal briefing and scheduling from 11/26/2007 to 1/22/2008. Our last Designation concludes (CR-1358) with a Proof of Deposit per Rule 8.706F of appeals documents to Judge Elaine Rushing. By "direction of the judges" court clerks refused to allow Defendants accompanying proffered Designation in lieu of a missing Chronological Index. It appears that this policy change may have been influenced by Assistant Presiding Judge Nadler or by Supervising Civil

Court Judge Rushing, and thusly, it falls short of minimum Due Process of Law standards. It should be reversed forthwith, and appeals briefing should be reinstated at once with respect to the integrity of files issue.

Dated: this 4th day of February, 2008

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FILED
APR 01 2008

No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Appellants' Petition to Presiding Judge Owen for Rulings on Hearing Motions Filed 1/22/08

Formally, this is a request for a ruling on Defendants' petition for separate hearings on their Notices of Appeal – a matter which has been pending for ten weeks since this request was made (copy attached) on January 22, 2008. Substantively, this request asks that the Sonoma County Superior Court honor the policy affirmed in the Appellate Branch Order of February 5, 2008 (that the essential supporting documents for an appeal be available before the briefing process starts). At the January 24, 2008 hearing, the Court agreed that this was NOT the case with respect to the attorney-fee-related appeals Noticed by Defendants on August 29,

2007 and September 26, 2007. In any event, the Sonoma County Superior Court should not relinquish jurisdiction (by any action or failure to act) until the transcript of the Appellate Branch hearing of January 24, 2008 is available – and Defendants have an opportunity to seek follow-through on the Court's commitments made at that time.

Dated: this 31st day of March, 2008

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Court of Appeal
First District
FILED
JAN 2 2009

COURT of APPEAL FIRST APPELLATE DISTRICT
Division Two **Case # A123622**

Michael Halliwell, et al,
Petitioners vs.

Sonoma County
Case # MCV 191306

Superior Court of California, County of Sonoma, Respondent;

Chrysanthe Paxinos,
Real Party in Interest

Petition for Mandamus

Citing **4/18/08** Complaints

re Condition of Case File

Appellants' January 2, 2009 Mandamus Petition notes: Defendants point out in their **April 18, 2008** Petition:

> **7a)** On October 22, 2007 Defendants filed their "Petition to Appellate Clerk Supervisor Donald G. Lewin Regarding the Case File" (CR-993 to CR-1061) and Charles Jensen apparently responded to this with his $10,188 assault on James Parker's bank account (thereby violating *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, because judgments consisting only of attorney's fees are not enforceable during the pendency of an appeal). Defendants responded with their October 29, 2007 Memorandum on Charles Jensen's Circumvention of Code of Civil Procedure Sec 917.1(d) (CR-1062 to CR-1080) and November 3, 2007 Exemption Claim and Supporting Affidavit (CR-1081 to CR-1108). Charles Jensen may have

anticipated from his familiarity with the time it takes (after having been notified that hearing reporter's transcripts have been completed) to prepare a chronological index, that a briefing order on Defendants' appeal Noticed on July 24, 2007 would be forthcoming shortly (it was filed on November 5, 2007). His opening this "second front" certainly had a disruptive effect on Defendants' ability to prosecute heir appeal.

7b) The substance of Defendants' November 21, 2007 appeal seeking to enforce the *Ziello* decision has yet to be considered by the Appellate Branch, but it is greatly intertwined with the sweeping scope of their affirmation order of March 6, 2008. Charles Jensen's further prosecution of the "money grab" aspect of the case was certainly designed to put maximum pressure on Defendants during the three weeks they had to prepare their Opening Brief pursuant to the November 5, 2007 briefing schedule. On November 7, 2007 Charles Jensen presented Defendants with his Opposition to their Claim of Exemption which said nothing at all to explain the following statement of opposition "(1) CCP Section 917.1 et seq, does not apply to JAMES PARKER (2) The cited case, ZIELLO v. SUPERIOR COURT (1999) 75 Cal.App.4th, 651, does not apply to Defendant JAMES PARKER." (CR-1112).

7c) In scheduling his Opposition for a November 13, 2007 hearing (CR-1111), Charles Jensen flouted the requirement printed plainly on the form: "A copy of this Notice of Opposition and Notice of Hearing must be served on the judgment debtor and other claimant at least 10

days *before* the hearing." Both sides showed up for the scheduled November 13, 2007 Exemption Claim Hearing (which Judge Rushing cancelled without notice to the parties, because she wanted to move her normal Monday activity, pre-empted by the Veterans Day Holiday, into this time slot). Defendants had to use up whatever forbearance from Judge Rushing they had left, by opposing her insistence (supported by Charles Jensen) that the hearing be moved to November 14, 2007, even though this disrupted their plans and still did not satisfy the 10 day notice requirement.

7d) At a rescheduled November 20, 2007 Exemption Claim hearing Defendant Michael Halliwell was not allowed to speak at all (not even to explain his standing to oppose the motion, which cost him $5,059). Charles Jensen revealed that his ground for Opposition was that neither the August 29, 2007 or the September 26, 2007 Notice of Appeal was effective, contrary to the clear mandate of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. However, because Judge Rushing had never served her order of September 25, 2007 on Defendants, and Plaintiff had not done so either (in spite of knowing that the order was in the file, and acting on this fact), the time limit in CRC Rule 8.751(a) (1) or (2) was not appli-cable. Defendants were therefore able, on November 21, 2007, to unambiguously perfect their appeal from the September 25, 2007 order, within the 90 day time limit under CRC Rule 8.751(a)(3). (CR-1204 to CR-1210)

7e) Immediately after filing their Notice of Appeal, Defendants renewed their Claim of

Exemption on the morning of November 21, 2007 at the office of the Sonoma County Sheriff, citing the fact that they had cured the defect which was the basis of Judge Rushing's ruling announced on November 20, 2007. Plaintiff's attorney never filed an Opposition challenging the fact that his (undisclosed until the November 20, 2007 hearing) ground for asserting that *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655 did not apply to James Parker, had been eliminated. Charles Jensen's failure to renew his Opposition also eliminated the possibility of any other ground. Defendants therefore assumed that their $10,188 was still in the Sheriff's holding account, until a remark by Charles Jensen at the Appellate Branch January 24, 2008 hearing caused them to suspect otherwise.

7f) What Defendants then learned from inquiries at the Sheriff's Department is described in their January 28, 2008 Appendix for Presiding Judge Boyd re Circumvention of Their Claim of Exemption without Any Opposition Being Filed or Any Recorded Judicial Authorization (CR-1869 to CR-1880). The following summary should suffice to demonstrate that this aspect of the case has lurched into the domain of Appellants' October 17, 2007 "Integrity of Files" appeal. **i)** According to the Sheriff's representatives no action was taken to initiate a release of the $10, 188 in dispute to Charles Jensen until after the long Thanksgiving Day weekend, and the Sheriff's Department did not do so until November 27, 2008. **ii)** When Judge Rushing returned to work on Monday November 26, 2007 she certainly saw Appellants' Endorsed Filed November 21, 2007

Notice of Appeal Relating to Judge Rushing's Order Facilitating Charles Jensen's Seizure of $10, 118 from James Parker and Michael Halliwell, which starts out: "Defendants James Parker and Michael Halliwell hereby appeal Judge Rushing's Order of November 20, 2007 AND her supporting Order of September 25, 2007 (which has never been provided to the parties, but simply signed and placed in the Case File.)" (CR-1204:11-13) **iii)** The Sonoma County Sheriff's staff does not send a Claim of Exemption to the Court until after Opposition to such a claim has been provided to them, but they informed Judge Rushing of the existence of Defendants' November 21, 2007 Claim of Exemption, when she contacted them on November 26 or 27. As inspection of the eleven entries in the electronic docket in MCV 191306 later than 11/05/2007 and before 12/07/2007 shows, Judge Rushing decided to pretend that Defendants' November 21, 2007 Claim of Exemption was never made, and that she acted only to reject James Parker's Claim of Exemption recorded on 11/08/2007. There is no trace of any action on this aspect of the case after 11/20/2007 in the electronic docket or the Case File, and Judge Rushing certainly never informed Defendants of whatever action she took by phone or in writing (the Sheriff's staff refuses to say which, saying only "check the Court File"). (CR 2146:15 to 2149:16) (Id. at 60:1to 61:25)

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SUBMITTED
MAY 12 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum to Sheriff Cogbill re Circumvention of 11-27-07 Exemption Claim

If one reads the electronic docket for the month of November 2007 in this case, it appears that there is no connection between Defendants' November 21, 2007 Notice of Appeal and Judge Rushing's disposition of Defendants' Claim of Exemption based on the holding of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, 655 that during the pendency of an appeal limited to a judgment awarding costs, including attorney's fees, CCP Sec 917.1(d) bars enforcement of the judgment. However, recently provided documentation from the Sonoma County Sheriff clearly shows that Judge Rushing took a series of actions, which were based on ignoring the mandate of California Rules of Court Rule 8.750: "A Notice of appeal shall be liberally construed in favor of its

sufficiency" and then pretending that Defendants' Appeal of November 21, 2007 (which cured the imagined defects of their prior appeals) did not exist. On November 26, 2007 Judge Rushing provided to the Sheriff, Courtroom Minutes stripped of any mention of the grounds of her decision (that James Parker had not in fact appealed from the $10,000 award of attorneys fees against him) so the Sheriff could not see from Defendants' November 21, 2007 Claim of Exemption (which was accompanied by a copy of their November 21, 2007 Notice of Appeal), that there was no legal basis for Judge Rushing's ordering the Sheriff to turn over $10,118 of the frozen assets of James Parker to Charles Jensen. To provide legal cover for this maneuver, Judge Rushing inserted a bogus entry into the 11/07/2007 electronic docket, "NOTICE OF ENTRY OF JUDGMENT, SERVED 9/25/07" to make it appear that Defendants' November 21, 2007 Notice of Appeal was not timely. This document reviews the case history, to place these actions in context. (CR-2396)

Dated: this 12th day of May, 2008

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Court of Appeal
First District
FILED
NOV 19 2008

COURT of APPEAL FIRST APPELLATE DISTRICT
Division Two **Case # A123226**

Michael Halliwell, et al,
Petitioners vs.

Sonoma County
Case # MCV 191306

Superior Court of California, County of Sonoma, Respondent;

Chrysanthe Paxinos, Real Party in Interest

Petition for Mandamus

Citing 1/24/08 Comment

re Frozen Funds Turnover

Appellants' November 19, 2008 Petition for Mandamus to require a rehearing analyzes appeal briefing:

> Respondent observes: "*Respondent would point out that Sheriff Cogbill to the best of our knowledge was not personally involved with Parker and associate.*" Defendants engaged in protracted conversation with employees of the Sheriff's Civil Division immediately after they began to suspect, as a result of a remark by Charles Jensen at the January 24, 2008 hearing, the existence of "below the radar" activity to enforce a fees judgment, which should have been held in abeyance pursuant to *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651 and CCP 917.1(d). Defendants met again with Sheriff's employees immediately after the May 6, 2008 hearing to make sure there would be no

repetition of such action by Judge Rushing (without informing Defendants). Civil Division Bureau Manager Elizabeth J. Warren confirmed the timing of the release of Defendants' frozen $10,118 to Charles Jensen. Our May 12, 2008 "Circumvention" Memo also notes: "The Sheriff's Department also provided all other records which Defendants asked for with respect to this matter, including a date stamped copy of our November 21, 2007 Claim of Exemption. Since the Sheriff's Department has come down on the side of the Rule of Law in this matter, and the empirical facts are now documented in the record, the process of evaluation of the handling of this matter by the Sonoma County Superior Court can now be undertaken by the Higher Courts of this State (and if the Due Process Clause of the Fourteenth Amendment be found to be applicable, the United States Supreme Court)." (Id. at 28:7-14) After "all the dust has settled" insofar as action by the Sheriff's Office is concerned, Defendants now agree with the concluding sentence of Section P: "*Moreover, the Sheriff's Civil Bureau and all of its employees acted with the utmost professionalism and followed all the applicable rules and procedures governing their actions.*"

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FEB 02 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Appellants' Petition to Presiding Judge Owen Citing Respondent's Appeal Opposition

Charles Jensen's Opposition to Defendant's November 21, 2007 Appeal concedes: *Appellant's 27 appears to be accurate as to how they discovered the Sheriff's collection.* Our November 19, 2008 Petition for Mandamus notes:

> Charles Jensen would have had a very steep hill to climb, were he to try to deny what he admits in #27, after having been sent (on May 12, 2008) this information, in Defendants' Memo to Sheriff Cogbill re Circumvention of Their 11-21-07 Claim of Exemption (at 27:11 to 28:6): "When Defendants contacted the Sheriff's Department (immediately after a remark by Charles Jensen at the January 24, 2008 hearing suggested that he might already have Defendants' $10,118), it was absolutely impossible to come away with anything in

writing (in spite of a protracted conversation with staff members who apparently spent HOURS talking with their superiors and Sonoma County Superior Court personnel). What-ever higher official made the decision was not disclosed by the Deputies at the window, but the position was firm: 'We don't give out information to people in your circumstances, you have to check the court file.' It was with the greatest difficulty that we were able to confirm WHEN the Sheriff's Department acted in response to direction by Judge Elaine Rushing (which Defendants needed to know in order to determine WHERE in the chronological Case File and Docket to check.) The acknowledged fact that the process of issuing a check to Charles Jensen (drawn on our funds) did not begin until November 27, 2007 indicated that whatever the court sent to the Sheriff to facilitate turning over our $10,188 to Charles Jensen was almost certainly not sent until at least five days after our November 21, 2007 Notice of Appeal (and the immediate renewal of Defendants' Claim of Exemption based on having thus eliminated the ground for its denial on November 20, 2007.) The bottleneck was broken open on May 7, 2008 when the Sheriff's Civil Bureau Manager Elizabeth J. Warren agreed to release a copy of what Judge Rushing sent to effectuate turning over Defendants' frozen $10,118 to Charles Jensen. It turned out to be a copy of the Courtroom Minutes of 11/20/2007 **SIGNED AND CERTIFIED ON NOVEMBER 26, 2007.** (Id. at 27:11 to 28:11)

Charles Jensen's Opposition to Defendant's November 21, 2007 Appeal proclaims:

#28 alleges a cover-up that never existed. No response is offered as none is warranted. Appellants' November 19, 2008 Petition for Mandamus to require a rehearing notes:

> Charles Jensen certainly does not agree with the position of the California Commission on Judicial Performance that "Judge Rushing's conduct violated canons, 1, 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." However, he is in no position to sweep aside such a finding with the sort of *ad hominem* attacks, which he uses to try to discredit Appellants' charges (documented at a level sufficient to justify the reopening of Judge Rushing's case by the Commission on Judicial Performance).
>
> The CJP summarized its findings: "None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal. 3d 826, 865, that honesty is a 'mini-mum qualification' expected of every judge." (CR-1867: 19-21, CI 3170) The CJP report pointed out that "Judge Rushing's conduct violated canons, 1, 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary)." (CR-1866:15-16, CI 3169) (Id. 2:2-21) In **Section V** Respondent argues: "*Appellant's 29 is*

insulting and no response will be tendered." Respondent is offended by the possibility that Judge Rushing might have been telling the truth, and actually believed in favoritism when (according to a 2006 Report by the Commission of Judicial Performance) she made this admission: "Judge Rushing then told Officer Holeman that in her courtroom she goes against the court policies for CHP and other officers, and that he should extend that courtesy to her. She persisted in telling Officer Holeman that she was a superior court judge and that her husband was an appellate court justice." (CR-1866:12-14, CI 3169) (Id. at 28:19 to 29:17)

Dated: this 1st day of February, 2009

Michael Halliwell Defendant pro se	James Parker Defendant pro se

D. Order of Examination (OEX) Proceedings

1 Charles Jensen's 5/23/08 launch of OEX process **44**

2. Judge Richey's 6/30/08 first OEX hearing **45**

3. Judge Boyd's 7/14/08 second OEX hearing. **47**

4. James Parker's 7/18/08 affidavit re second OEX **49**

5. Mike Halliwell 7/18/08 affidavit re second OEX. **51**

6. Defendants' 7/21/08 immediate caselaw update. **54**

7. Defendants analyze 7/21/08 third OEX hearing. **58**

8. Judge Boyd's 7/23/08 OEX Suspension Order . . **62**

9. Defendants designate 7/28/08 OEX Transcript . **65**

10. Judge Chouteau's 8/29/08 transcript exclusion **67**

11. Defendants' 12/12/08 OEX hearing delay plea. **69**

12. Judge Boyd's 12/15/08 fourth OEX hearing . . . **75**

13. Judge Boyd's 12/19/08 fifth OEX hearing. **77**

14. Judge Boyd's 12/22/08 OEX Contempt Order. . **79**

15. Judge Boyd's 1/6/09 sixth OEX hearing **87**

16. Judge Boyd's 1/20/09 OEX Hearing Minutes . . **88**

17. Judge Boyd's 3/17/09 eighth OEX hearing **90**

18. Judge Boyd's 3/17/09 OEX Contempt Order. . . **93**

19 Defendant's 3/20/09 plea to drop jail sentence **102**

20. Judge Boyd's 4/17/09 OEX Cancellation. **118**

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707-527-9911 Fax: 707-527-0908
Attorney for Plaintiff C. Paxinos

ENDORSED
FILED
MAY 23 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,

vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

ORDER TO APPEAR

FOR EXAMINATION

1. TO (name): JAMES PARKER

2. YOU ARE ORDERED TO APPEAR personally before this court to **a.** furnish information to aid in enforcement of a money judgment against you.

3. DATE: JUN 30 2008 TIME: 8:15 a.m, Dept 21 at: 3035 Cleveland Ave #200 SANTA ROSA, CA 95406

Before Judge: ROBERT S. BOYD

4. Judgment creditor applies for an order requiring (name): JAMES PARKER to appear, as stated in 2 a

5. The person to be examined: the judgment debtor

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

DATE: May 23, 2008 Print Name: Charles T Jensen

Signature: _____

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY June 30, 2008
Hon. ANDRIA RICHEY, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter: None

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JUN 30 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present. Defendant, Michael J Halliwell, is also present. Oath is administered to JAMES PARKER. Examination is held in the presence of the Court. Court notes Defendant's objection that a Reporter is not present. Court overruled Defendant's jurisdictional objection [in June 23, 2008 Exemption Claim at 12:9-16:] Defendants' Notice of Appeal re May 6, 2008 Award of Attorney's Fees (Filed May 27, 2008, and signed by James Parker and Michael Halliwell) precludes the fees-only judgment enforcement activity envisioned by a Hearing slated for June 30, 2008 before Judge Robert Boyd, pursuant to *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303:

"We are called upon to determine whether enforcement of award of attorney fees, together with other costs, is automatically stayed by taking an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to a contractual provision are an element of costs when, as here, respondent has not recovered money damages. We conclude that in such a case the fees are costs, and that filing a notice of appeal stays execution without

posting of an undertaking."

During the Examination, defendant refuses to answer question about his bank account, and defendant refuses to provide his driver's license. Court orders Defendant to comply with its order to provide requested information to Plaintiff. ORDERED CONTINUED TO 7/14/08 OEX HEARING FOR POSSIBLE CONTEMPT PROCEEDINGS.

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY July 14, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JUL 17 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 7/21/08 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present. Defendant, Michael J Halliwell, is also present in court.

Court examines Defendant James Parker, [who protested:] "You are ignoring what the Court directed me to do, what Judge Richey directed me to do. Do we have a copy of that? We have a copy of the minutes, and I will give it to you. He claims falsely something that is not true." (Transcript at 9:6-10) [Charles Jensen replied:] "While we are on the record, if I might – excuse me, Mr. Bailiff, Mr. Parker – that will be my third appearance on a rather simple OEX. I would at that time be asking this Court to consider the utmost of every possible sanction. I want it clear on the record that this is running the bill. It's not being done for free to the plaintiff, and I am just a little fed up. And I apologize for my anger." (Ibid at 9:22 to 10:2)

Defendant is advised of possible contempt sanctions. [James Parker argued:] "Judge Richey acted outside her authority, I believe, but she also indicated only

two specific items I was to expose, if you will. He claims she did otherwise, which is not true. I objected because there was no court reporter there on that day, on June 30th, but she decided to go ahead with her interrogation of me. But what Charles Jensen says is false. She did not order me to supply all of that information. I don't know what you are reading, but that is not the Court minutes and that is all we have to go on; and that's all I would refer to at this time." (Ibid at 7:22 to 8:5) [The Court answered:] "I am looking at Mr. Jensen's July 2nd letter to you, sir, in which there are three different items. It says additionally that the Court ordered you to provide written answers to the questionnaire, as well as provide the following, and that is those three topics." (Ibid at 8:6-11)

Court orders Defendant to turn-over requested documents: Written answers to the questionnaire, and the (3) categories of documents as itemized in Mr. Jensen's letter dated July 2, 2008: (1) Copies of any bank statements that have your name on it, be they savings, checking, or impound accounts; (2) Copies of investment/retirement accounts, stock accounts, IRA accounts (both Roth-IRA, and other IRA), and/or 401K accounts; and (3) To provide your current driver's license.

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com SUBMITTED
JUL 18 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Affidavit re ISSUES RAISED in June 30, 2008 to July 14, 2008 OEX Proceedings

[Contempt threats without transcripts issues:]

There was no Reporter present at the June 30, 2008 OEX hearing (in spite of every advance indication that in *Paxinos v Halliwell & Parker*, this proceeding would not proceed in the informal way it usually does).

Along with the July 18, 2008 affidavit of co-Defendant Michael Halliwell, this affidavit is submitted in support of Defendants' request that a Reporter be present at the July 21, 2008 hearing.

My July 14th saying, without disrespect to the court, that I intended "to preserve my Fifth, Sixth and Fourteenth Amendment Rights" (Transcript at

4:11-12) is a reference to *In re Oliver* (1948) 333 U.S. 257, which affirms the applicability of the Bill of Rights (via the Due Process Clause of the Fourteenth Amendment) to contempt proceedings, especially a Defendant's right to know the nature of the charges against him in time to prepare an adequate defense.

Dated: this 18th day of July, 2008

_____

James Parker
Defendant pro se

Michael Halliwell, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

SUBMITTED
JUL 18 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants Request Reporter for July 21, 2008 OEX Hearing and Filing of Transcripts and Affidavits

[Judge Boyd tried to force compliance with demands by the prior OEX Judge, the Honorable Andria K. Richey.]

Defendant James Parker answered EVERY question asked at the June 30, 2008 hearing by attorney for Plaintiff Paxinos, Charles Jensen, except for the two identified in the Minutes of this proceeding. These included questions about major asset categories such of ownership of a second automobile (NO), Life Insurance policy (NO), real estate holdings (NO), and outstanding judgments IN FAVOR of James Parker (NO). Charles Jensen already knows about Defendant's bank account (from

which he seized and appropriated $5,059 belonging to James Parker and $5,059 belonging to Michael Halliwell). Charles Jensen has personally served papers on James Parker at 271 E. Cotati Ave in Cotati, at a time when James Parker's car was parked right next to this residence, with the address clearly listed on the parking space. James Parker has also provided his Driver's License Number to Mr. Jensen's client, landlord Paxinos, and this information is also readily obtainable by Mr. Jensen from the Department of Motor Vehicles.

Charles Jensen's letter of July 2, 2008 (copy attached) is the basis for Judge Boyd's following in Judge Rushing's footsteps, when she said at the outset of her portion of the case, "I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up." (Transcript at 163:23-26)

The question which James Parker declined to answer about his bank account, was a request for the account number (which Charles Jensen already had). Here is how Charles Jensen provides the basis for what Judge Boyd would refer to as a question **topic**: "copies of any bank statements that have your

name on them, be they savings, checking or impound accounts." THIS IS ABSOLUTELY VERBATIM with Transcript at 3:22-24. Charles Jensen lays the groundwork for Judge Boyd's creating another **category** where there was NO UNANSWERED QUESTION: "copies of any investment retirement accounts, stock accounts, IRAs, (both Roth-IRA, and other IRA), and/or 401K accounts." THIS IS ABSOLUTELY VERBATIM with Transcript at 3:24-26. Judge Boyd did depart from Charles Jensen's letter in asking only for a **copy** of James Parker's driver's license, instead of the license itself. (Transcript at 3:27). Judge Richey made it clear on June 30th that, after James Parker had been advised of the applicable legal requirements and penalties for refusal, the judge would ask him the same questions on July 14, 2008 which he had refused to answer at the first Order of Examination (OEX). Charles Jensen's letter of July 2, 2008 invents out of whole cloth the notion that "the Court ordered you to provide written answers to the attached questionnaire."

Dated: this 18th day of July, 2008.

Michael Halliwell
Defendant pro se

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com

SUBMITTED
JUL 21 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants' Immediate Follow-Up re Issues Raised during July 14, 2008 OEX Proceedings

Defendants conducted an unbiased "CCP Sec 917.1(d)" search, to demonstrate whether our interpretation of the scope of the automatic stay provision of CCP Sec 916(a), is indeed well supported by governing precedent. It is. The results of this search follow below.

A website (http//www.courtinfo.ca.gov/opinions/) LexisNexis search for <CCP Sec 917.1(d)> turns up (<+> positive treatment is indicated) *Gee v American Realty & Construction Inc.* (2002) 99 Cal.App.4th 1412, where (in the second paragraph) the Court of Appeal quotes its own May 21, 2002 opinion:

> "The judgment and order awarding defendants costs and contractual attorney fees would be

> automatically stayed on appeal without the necessity of an undertaking. (See Code Civ. Prcc., Sections 916 subd. (a), 917.1, subd. (d), 917.9, subd. (a)(3); *Bank of San Pedro v Superior Court* (1992) 3 Cal 4th 797, 800-801.)"

Gallardo v Specialty Restaurants Corp. (2000) 84 Cal. App.4th 463 notes that in situations where bondable and non-bondable costs are contained in the same order (as in its own case), a party may then ask a court of appeal to disentangle the situation, and apply the automatic stay provision to the appropriate part of the judgment.

> "Supersedeas is the appropriate remedy when it appears that a party is refusing to acknowledge the applicability of statutory provisions 'automatically' staying a judgment while an appeal is being pursued." *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301,303.)

[This Nielsen citation] squarely addressed the issue that presents itself in *Paxinos v Halliwell & Parker*:

> We are called upon to determine whether enforcement of the award of attorney fees, together with other costs, is automatically stayed by the taking of an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to contractual obligations are an element of costs when, as here, respondent has not recovered money damages. We conclude that in such a case the fees are costs, and that filing a notice of appeal stays execution without the posting of an

undertaking.

The *Gallardo* Court is firm in its reading of the plain language of CCP 916(a), that unless there is a **valid** exception, the appeal itself says all proceedings related to the judgment being appealed. Thus immediately after the *Nielsen v. Stumbos* citation, the *Gallardo* opinion continues:

> Section 916, subdivision (a) provides: "Except as provided in Sections 917.1 to 917.9 . . . the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order."

Charles Jensen cites NO exception to Sec 916(a) stay provisions, much less a valid one.

Defendants do not suggest that there are no cases where a motion for a stay without an undertaking during an appeal, might not be appropriate, only that there is no such case, which parallels the circumstances of *Paxinos v Halliwell & Parker*. HOW CAN IT BE THAT AN EXPERIENCED UNLAWFUL DETAINER LAWYER, WHO INSISTS ON "PLOWING AHEAD" WITHOUT ANY

SUPPORTING AUTHORITY, BE **PROPERLY** DEFERRED TO, IN THE FACE OF NUMEROUS SUPPORTING CASES CITED BY TWO LITIGANTS *IN PROPRIA PERSONA*, **WITHOUT ANY BRIEFING ON THE MATTER IN DISPUTE?**

Dated: this 21st day of July, 2008

James Parker
Defendant pro se

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com

SUBMITTED
JUL 25 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Appendix
Analyzing Transcript
of July 14, 2008 OEX
OEX Hearing

Defendants have received welcome news that the Transcript of July 21, 2008 OEX hearing will be available for pick up when Division 21 opens on July 22, 2008. [This Transcript quotes James Parker:]

> If the award is for costs and attorneys' fees only, there is an automatic stay pending appeal, and that is [why] this Court does not have jurisdiction, because there is an automatic stay in place. (Transcript at 7:13-16)
>
> In *Ziello versus Superior Court* (1999) 75 Cal. App.4th 651, the appellate court was asked to rule on whether an undertaking was required to stay execution of the judgment for costs pending appeal. It decided it was not.
>
> I am not required to file for a stay, since an automatic stay is in place because the judgment which at this point isn't enforceable anyway. It is

> only for costs and attorneys' fees. And that is what, that in itself is what gives me an automatic stay, Your Honor. (Ibid at 8:16-27)

Judge Boyd summed up key CCP stay provisions:

> If we look at CCP section 917.1, it says, "Unless an undertaking is given, perfecting the appeal shall not stay enforcement." Dropping down to 917.1(d): "However, no undertaking shall be required pursuant to the section solely for costs." Why would that not apply, requiring an automatic stay? (Ibid at 12:26 to 13:5)

Charles Jensen answered Judge Boyd's question:

> Because we are not seeking the costs, Your Honor; we are seeking the attorneys' fees. (Ibid at 13:7)
>
> The costs are no longer being sought in this OEX or in the motion for attorney's fees. Costs have not yet been paid, and that would be, Your Honor, the filing fee. (Ibid at 13:11-13)

Judge Rushing's $20,720 award explicitly includes the motion filing fee. Defendants point out in their Analysis of the July 21, 2008 Transcript:

> Actually, Charles Jensen was seeking both costs and attorney's fees in his motion granted by Judge Rushing on May 6, 2008. In most cases where Sec 917.1(d) is applicable, the non-fees costs (such as for filing the motion, as with the judgment Charles Jensen is trying to enforce) are only a small fraction of the attorney fees being sought. This was true of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, from which Charles

> Jensen is trying to create a false distinction. Charles Jensen probably brought a copy of the order Judge Rushing signed on May 6, 2008 to give him every cent he sought, with him to Court on July 21st. If he didn't, the Clerk could have easily located it for him on the Court's computer.
>
> Trying to win with this sort of bending the truth may be only a small violation of Bus. & Prof Code 6068(d), because of the small amount of non-fees costs involved in the *Paxinos v Halliwell & Parker* judgment at issue, but it illustrates the wisdom of Judge Richey's giving James Parker two weeks to think about it (and check out whether he might be on sound legal ground in refusing to answer) before the court again demanded that he disclose the number of his bank account and give up his driver's license number. (Id. at 19:7-15)

Judge Boyd asks: "You are saying attorneys' fees are not costs?" Charles Jensen replies: "That is correct." (Ibid at 13:19-21) Defendants point out in their Analysis of the July 21, 2008 Transcript:

> In *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303, the court squarely addressed the issue that presents itself in *Paxinos v Halliwell & Parker*: "We are called upon to determine whether enforcement of the award of attorney fees, together with other costs, is automatically stayed by taking an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to contractual obligations are an element of costs when, as here, respondent has

not recovered money damages. We conclude that in such a case the fees are costs, and that filing of a notice of appeal stays execution without the posting of an undertaking." (Id. at 7:16-20)

Dated: this 25th day of July, 2008

James Parker
Defendant pro se

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
JUL 23 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants
_____/

ORDER STAYING ORDER OF EXAMINATION PROCEEDINGS

At the hearing of this matter conducted on July 21, 2008, plaintiff appearing through attorney Charles Jensen, and judgment debtor James Parker appearing in pro per, the court requested parties to produce copies of the prior pleadings in which an appeal was filed concerning the imposition of attorney's fees in the amount of $20,680 against judgment debtor James Parker and in favor of plaintiff, and the court now having received the various documents provided by the parties and more importantly reviewed the court file in this matter, makes the following determination:

On May 25, 2008, defendants filed a notice of appeal of the May 6, 2008, award of attorney's fees, the award by Judge Rushing of $20,680 in attorney's fees and $40 in filing fees, awarded against judgment debtor James Parker. The court further understands that as to this particular appeal, the appellate division is awaiting preparation of the various transcripts so that this appeal can be filed. The court is aware that there is already an appeal on a separate matter set in this action for September 25, 2008. However that is a separate issue from the appeal filed of the awarding of the $20,680 in attorney's fees and $40 in filing fees. The hearing on the appeal on this particular award of attorney's fees has not yet been scheduled and cannot be until the transcript is prepared. The court understands that court staff had hoped to consolidate this appeal with the one already scheduled for September 25, 2008, but does not feel it can do so given the time constraints of having the transcripts prepared and then a briefing schedule imposed.

The particular order of examination which forms the basis of this decision is an attempt by Mr. Jensen to collect the $20,680 in attorney's fees he was

awarded on May 6, 2008. As it does appear that the judgment debtor has filed an appeal of that award, pursuant to the authority of Code of Civil Procedure 916, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed upon. Pursuant to Code of Civil Procedure section 917.1(d) no undertaking is required when seeking a stay of an enforcement for costs.

Therefore, the court will stay further proceedings on the order of examination for purposes of recovering the attorney's fees awarded to plaintiff of $20,680 until after the appeal is heard.

DATED: July 23, 2008

ROBERT S. BOYD
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

ENDORSED
FILED
JUL 28 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Ex Parte Application Seeking Permission to Designate OEX Hearing Transcript Analysis re Their Appeal Noticed on May 27, 2008

Even If the ORDER STAYING ORDER OF EXAMINATION PROCEEDINGS issued by this Court on July 23, 2008 is appealed by the Judgment Creditor, Counsel for Plaintiff Paxinos has indicated support (Hearing Transcript of July 14, 2008 at 9:22 to 10:2) for expedited consideration. Judgment Debtors fully support expedited consideration and feel that there is no reason to "reinvent the wheel" with respect to the substantial effort already put into consideration of the proper scope of CCP Secs 916(a) and 917.1(d). Besides the jurisdictional question itself, there is an implementation problem which might require an appeal by Defendants,

arising out of the fact that on October 2, 2007 the Writ of Execution for the $10,000 fees judgment was never served on Defendants (nor were the Courtroom Minutes noting this Writ, nor was this part of the Case File accessible to Defendants during the crucial time frame). This Writ of Execution was clearly related to Defendants' Notice of Appeal of September 26, 2007, and so the Court had no power to issue anything to facilitate enforcement of the underlying attorney's fees judgment (nor to ignore Defendants' Appeal: see *Ehret Ichioka* (1967) 247 Cal.App.2d 637, 640-641). Defendants see no reason why OEX Transcripts could possibly prejudice anyone's interests.

Dated: this 28th day of July, 2008

Michael Halliwell Defendant pro se	James Parker Defendant pro se

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com # MCV 191306

FILED
AUG 29 2008

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Proposed Order to Designate OEX Hearing Transcript for Consideration re 5/27/08 Appeal

This Order hereby authorizes Appellate Clerks in the Hall of Justice to accept and convey to Presiding Judge of the Appellate Branch Rene Auguste Chouteau, a copy of the accompanying "Defendants' Added Designation re Appeal Noticed on May 27, 2008 (OEX Hearing Transcripts and Analysis") and "Defendants' Appendix Analyzing Transcript of July 21, 2008 Hearing." The purpose of this Order is to bring to Judge Chouteau's attention the existence of an ALREADY TRANSCRIBED Reporter's Transcript of closely related OEX Proceedings. Defendants argued:

> Since a transcript for the May 6, 2008 Hearing where the $20,000-plus attorneys' fees award was

granted is not yet available, designating the accompanying July 21, 2008 OEX Hearing Transcript and Analysis cannot possibly produce any delay. If Plaintiff appeals Judge Boyd's stay order, the July 21st proceedings will be an essential part of such an appeal. If the stay remains in place, these proceedings will be an essential part of Defendants' case on the underling judgment. No one wants an extra OEX Appeal hearing. (Chronological Index #04787)

Copy to Charles Jensen via Box 170.

Dated: this 28th day of July, 2008

Michael Halliwell Defendant pro se	James Parker Defendant pro se

Motion Denied

Dated: AUG 28 2008

Presiding Judge Choteau
Superior Court Appellate Branch

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

'08 DEC 12
8:01 am
Sonoma County
Superior Court

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	No. MCV-191306 **Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum Citing Grounds for Vacating Proposed OEX Hearing of December 15, 2008

Charles Jensen has conceded that no undertaking (appeal bond) is appropriate in the current circumstances (see accompanying brief at 2:21-25) and CCP Sec 916 plainly requires that in these circumstances "the perfecting of an appeal stays proceedings in the trial court upon judgment or order appealed from or upon matters embraced therein or affected thereby, **including enforcement of the judgment or order.**" There is no doubt that the scheduling of an OEX hearing (which took place on November 14, 2008) was a court action, as Charles Jensen has also conceded.

Our November 19, 2008 Mandamus Petition (at 78:3-7) quotes recent appeal briefing:

In **Section I** Respondent commits a further distortion of the procedural history of the case: "*Appellants' 11 again grants Mr. Jensen powers he does not possess. Mr. Jensen doesn't set hearings, the Court does.*" In fact, the needs of attorneys are taken into account when hearings are set, and Judge Rushing gave priority to this practice over the needs of Defendants.

One of the most important reasons that CCP Sec 916 stay provisions include not only the order itself, but also matters "affected thereby" during appeal proceedings, is that this allows litigants to concentrate on making an effective case before the higher court.

At one stage in prior OEX proceedings, the Court asked James Parker how he would respond if the court denied his challenge to its jurisdiction, and he cited the governing precedent which would be his next line of defense (relating to Due Process considerations). In our analysis of this subject (at page 4) in the accompanying brief, *Cooper v Superior Court* (1961) 55 Cal 2d 291, 292, is cited dealing with circumstances where the order "was not a 'lawful' order of the court (within the meaning of [the applicable section of California's Code of Civil Procedure] and hence it was not contempt for him to disobey it."

Our November 21, 2008 Mandamus Update (at 8:1 to 9:26) quotes James Parker:

> In *Clark v Millsap* (1926) 197 Cal 765, 785, our Supreme Court affirms: "**Fraud or unfairness on the part of the attorney will prevent him from recovering for services rendered.**"
>
> In his response to my (James Parker's) Opening Brief's Conclusion, Charles Jensen's Reply Brief proclaims: "Counsel for respondent has never been caught lying." The specific lie I (James Parker) referred to in that brief was Charles Jensen's claim in Judge Rushing's proceedings that I had tried to conceal the presence of Michael Halliwell at 1041 Copeland Creek Drive. In fact, I first called Michael Halliwell's residency to Charles Jensen's attention in a three-way telephone conversation on April 12, 2007, well before the trial started. But Charles Jensen pretends that this conversation never took place. Charles Jensen hung up on Defendants during this April 12th conversation and immediately severed all further communications with Defendants. This was part of his strategy to prevent us from calling other inconvenient facts to his attention.

Michael Halliwell's November 5, 2008 Reply Brief (at 11:23 to 12:17) observes:

> At the July 21, 2008 hearing, Charles Jensen also sought to bolster the validity of his $20,720 fees award by referring to an ex parte application to stay enforcement of this award, which had allegedly been denied by Judge Allan D.

Hardcastle. Defendants' July 25th Analysis quotes Charles Jensen's explanation: "The proposed order that I did receive, an endorsed filed copy, has handwritten across it – hand-written – 'Denied,' dated and signed by Judge Hardcastle. That is as much as I can tell the Court." (Transcript at 21:24-27) Charles Jensen then claimed to recall two rulings on this subject. Defendants' Analysis quotes his July 21, 2008 statement: "The ex parte judge, which I believe was Judge Nadler, but I could be mistaken – and the quote 'Petition' was heard by Judge Hard-castle. It has been the same argument." (Tran-script at 22:9-12) Defendants' Analysis continues (at 39:23 to 40:7)

> The only argument, written or oral heard by Judge Rushing that the stay provision of 916(a) was allegedly not activated was **because no appeal had been perfected.** The ex parte action by Judge Nadler (or any other judge) and the Petition rejection by Judge Hardcastle are inventions by Charles Jensen. As he noted earlier in his testimony, "I get a copy of everything," so it should have been an easy matter for him to produce the necessary documentation of an alleged ex parte and Petition argument presented by Defendants, which he says is so redundant.

Charles Jensen ventures further into Fantasy-land: "It was raised in passing in the moving papers; the three-judge panel as to Appeals 1 through 4; it was addressed in Judge Chouteau's written opinion that it didn't apply; and that, you know, the first collection of monies for the

> plaintiff were proper." (Transcript at 22:13-17) Charles Jensen admits in appeals briefing for Appeals No. 5 and No. 6, that Defendants did not find out that their money had been given to Charles Jensen by the Sheriff until AFTER the January 24, 2008 Appellate Branch hearing, so how could Defendants have said anything about how this was accomplished in moving papers for Appeals 1 through 4, filed at least a month before the hearing?

Michael Halliwell's November 5, 2008 Reply Brief (at 13:6-15) observes:

> Defendants' July 25th Analysis of this episode continues (at 44:18-24): "After Clerk Stephen Berry had tried to locate the documents which Charles Jensen was referring to, Charles Jensen tried to help: 'I would have to say, Mr. Berry, that I believe the petition was May or June. I believe it was fairly recent. The denial was – I know the denial was by Judge Hardcastle, and if it is listed that way, you may be able to find the petition and whatever the headnote claim is. It was a petition for stay, as I recall it.' (Transcript at 26:18-24) Judge Boyd responds: 'Judge Hardcastle has been in Juvenile Court for some time, so if he signed it, he went to Juvenile Court I believe about October '07.' (Transcript at 26:25-27) Charles Jensen confirms: 'I believe it was Judge Hardcastle.' (Transcript at 26:28)"

Charles Jensen must be required to establish that he is an attorney in good standing, before he is to be allowed to further represent his client. An

essential part of this good standing is compliance with Business & Professions Code Sec 6068(d) [A member of the Bar "shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth."]. An attorney cannot be allowed to win by cheating and then to continue as if nothing has happened. If no satisfactory basis for his prior assertions (relating to documents which do not exist) is forthcoming, Charles Jensen should be sanctioned and should forfeit his right to any compensation for activities "tainted with fraud."

Dated: this 12th day of December, 2008

Michael Halliwell
Defendant pro se

James Parker
Defendant pro se

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY December 15, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **ENDORSED FILED**
Plaintiff vs DEC 16 2008

JAMES PARKER, et al, re OEX PROCEEDINGS
Defendant Action # MCV-191306

SPECIAL SET CALENDAR 12/19/08 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Court hears the arguments of the parties. [Judge Boyd asks:] "Mr. Parker, just to review the matter again, my understanding is that your are contesting the ability of this Court to, you are asking to have the OEX continued, and the basis of that is you have filed a writ with the California Supreme Court and you have not heard a response from the California Supreme Court. And I understand the basis of that writ is a request that the matter should not proceed while they have yet to issue their writ, is that correct, sir? [James Parker replies:] "Yes. We are also depending upon your order of what – was the date? July 23 – stating that was the case, the OEX wouldn't go forward until the appeals were finished." (Transcript at 2:14-26) [Judge Boyd responds:] "Well, the Court – I recall the order you referenced, and it is my recollection that I ordered this OEX was to be stayed while your appeal with the Appellate Division of the Sonoma County Superior Court was pending. That hearing was held; an order was issued on November 24th, 2008, and filed on December 5th. So that is what the Court was saying by that

order." (Ibid at 3:10-17) [James Parker objects:] "Your Honor, respectfully, your order of – what was that date? July 23rd – did not say 'the local appeals court.' It said, 'until the appeal was heard.' You did not stipulate in your order that it was what appeals court it was." [Judge Boyd responds:] "All right. Are you prepared to answer the questions, sir? I am ordering you to come forward, be sworn and answer the questions of Mr. Jensen." [James Parker responds:] "Well, Your Honor, all I can say is we do not believe that the Court has jurisdiction, based on your own order." (Ibid at 4:3-14)

Court ORDERS the examination to proceed: "Well, I am giving you – to be absolutely clear – a warning that if you do not answer these questions today, you are exposing yourself to a $1,000 fine and/or five days in jail, including the possibility of both. I want you to be clear that that is what you are exposing yourself to." (Ibid at 4:22-28)

Defendant declines to be examined, answering: "Yes, Your Honor. I don't want to go to jail; I don't want to pay a $1,000 fine. But I have no choice but to decline to protect legal rights of due process." (Ibid at 5:1-4)

[Judge Boyd ruled:] "Well, the Court then finds this to be a direct contempt in the view of the Court, a civil contempt pursuant to CCP Sec 1209(a)(5), disobedience of a lawful court order." (Ibid at 5:5-8)

AN ORDER TO SHOW CAUSE is issued as to Defendant, JAMES PARKER, to show cause why Sanctions should not be imposed for his failure to comply with a lawful Court order.

ROBERT S. BOYD _____
Judicial Office

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY December 19, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs DEC 22 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 1/6/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Defendant declines to be examined, saying: "Mr. Jensen is not telling you that we filed the motion for reconsideration. That has not yet been denied, and the reason is has not been denied we don't know. [Brief interruption] If I may finish. And even though he says it was denied from the bench, and I do agree that it was denied from the bench, but even if it was denied from the bench, the local appellate court that denied it from the bench still has jurisdiction until tomorrow. And that is back to CRC 8.708. So this hearing is premature. Mr. Jensen knows that this hearing is premature. Mr. Jensen set this hearing even before that November 20, 2008 appeal hearing was heard." (Transcript at 11:21 to 12:6) [Judge Boyd observes:] "You have confirmed that the bench ruled, that the appellate division ruled from the bench denying your petition." (Ibid at 12:23-25) [James Parker replies:] "We did file a motion for a re-hearing on that. The Court has not acted on that as of yet." (Ibid at 13:12-13) [James Parker explains

the extension of jurisdiction resulting from an unanswered motion for rehearing:] "CRC 8.708 states the appeal court maintains jurisdiction for 30 days after they make a ruling. Whether it be from the bench or if they back it up with a written ruling that comes along later, they can decide that [their pronouncement of decision was the written ruling, so] it [their response deadline] is 30 days from that." (Ibid at 13:27 to 14:3) [James Parker adds:] "We are in the middle of trying to prepare an appeal to the First District Court [of Appeal], and if need be, file an appeal to the Supreme Court on the [decision announced at] the hearing that took place on November 20, 2008." (Ibid at 14:14-17)

[Judge Boyd says to Defendant James Parker;] "I want to give you another opportunity to consider whether you are going to answer the questions." (Ibid at 21:13-14) [James Parker responds:] "If you are going to try to force me into revealing my resources at this point, I am going to respectfully decline to do that. If you want to put me in jail you can do that. If you want to fine me, you can do that." (Ibid at 25:3-6) Court finds contemptor's action is contempt of court, and he is adjudged guilty of contempt of court in violation of Code of Civil Procedure section 1209(a)(5). James Parker, the contemptor, is sentenced to spend three days in the County Jail. Execution of this sentence is stayed to January 6, 2009, at 8:30 a.m., Courtroom 21.

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
DEC 22 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER AND JUDGMENT OF CONTEMPT

JAMES PARKER, et al.,
Defendants

_____/

On December 19, 2008 the court held a hearing on an Order To Show Cause In Re Contempt which had been noticed and announced in open court to Defendant and Judgment Debtor James Parker on December 15, 2008, ordering him to appear on December 19, 2008, to show cause why he should not be adjudged guilty of contempt and punished accordingly for the willful disobedience of an order to answer questions presented by counsel for Judgment Creditor at a properly noticed and scheduled order of Examination. [*At the December 19, 2008 hearing James Parker said*:]

Now, the first hearing we had before the local appeals court, the Sonoma County Appeals Court, was held on January 24, 2008. And this is a response to an order on motion for reconsideration and petition to resolve inconsistencies that we filed with the Court based on that hearing. And I will point out to you, it says: 'Appellant's motion for reconsideration and appellant's petition to resolve inconsistencies are deemed to be a motion for rehearing, which was denied by operation of law on April 5th, 2008 pursuant to CRC 8.708.' (Transcript at 4:2-12) [*Parker continued*:] This hearing today is being held prior to the expiration of the 30-day notice on a hearing that took place on November 20th. So, I think that reinforces our petition. (Ibid at 4:24-26) [*The Court asked how this applied to the current situation, and Mr. Parker answered*:] Because they are referring to April 5th, 2008, which was 30 days after the [decision]. The order was March 6th, and that [April 5th] is 30 days after the order of March 6th that they issued in writing. (Ibid at 5:6-10) [*Parker explained*:] This is just an example. I am not saying what is going on today is based on the January 24 hearing or the March 6 hearing. I was just demonstrating it as an example of the fact that the local appeals court maintains jurisdiction for 30 days after they issue a ruling. And it is dependent upon whether it is a written ruling or a ruling from the bench. [*The Court asked*:] If I accept what you say, what difference does it make to what we are doing? [*Mr. Parker answered*:] Here? Okay. The hearing for the $20,000 judgment that was awarded to Mr. Jensen was held on November 20 – that 30 days –

> of this year, 2008. And that 30 days has not expired yet. Minimally, it would be tomorrow that it expires, minimally. (Ibid at 7:3-18) [*James Parker continues*:] But they can even move later if they choose, because we have filed a motion for re-hearing with them. We also filed another motion for rehearing which we filed yesterday, and Charles Jensen has a copy of it, so they could extend their jurisdiction from this appeal for re-hearing if they so chose. But minimally, it doesn't expire until tomorrow, so this hearing is premature. Therefore, this Court does not have jurisdiction. (Ibid at 8:9-17)

At the hearing on December 19, 2008, Mr. Parker, after arguing why this court did not have jurisdiction to proceed with the hearing, arguing that this hearing was premature, arguing that he had a right to be represented by a non-attorney who was present in the courtroom, and arguing that this court had ordered a stay which was still in effect to preclude the court from having the Order of Examination continue, was ordered to be sworn as a witness and answer the questions presented by Charles T. Jensen, counsel for Judgment Creditor.

> [*Charles Jensen cited the judgment involved*:]
>
> $20,000 was the original order that was issued, Your Honor, on May the 6th. [*The Court asks*] As we sit here today, there is no stay on the enforcement of that order that has been ordered by any

> court? [*Charles Jensen answers*:] That's correct. There has been no noticed motion, no noticed hearing for petition. They are simply papers that are filed – sometimes a motion, sometimes a petition – with no hearing set, no filing fee and no setting by the clerk and no stay order. [*The Court asks*:] So there is no barrier to the enforcement of that judgment today? [*Charles Jensen answers*:] That is correct. [*James Parker interjects*:] We disagree with that. [The Court responds:] I heard your argument, sir, and I disagree with your argument. Now I want to move ahead, so what I am going to do is ask you, because it is the Court's belief that you are required to answer those questions that Mr. Jensen has, so, sir, I have asked you to come around to the witness chair, be sworn in and answer those questions. (Ibid at 4:24 to 15:16)

Mr. Jensen had previously, at the request of the court, recited the very questions he wished Mr. Parker to answer, and the court believes they were appropriate questions to be asked and answered at the examination of a debtor. Mr. Parker was warned at least twice during the hearing on December 19, 2008, that if he refused to answer the questions, he was exposing himself to a fine of up to $1,000, five days in custody, or both. Mr. Parker refused to be sworn and re-fused to answer the questions. A transcript of the December 19, 2008 proceeding is

attached hereto as Exhibit A. [*The transcript quotes this discussion of the stay issue*:]

> This is a document filed July 23, 2008? [*James Parker confirms*:] Yes. [*The Court continues*:] I see now what you are referring to. That it was to be stayed until after the appeal was heard, and that was an appeal with our appellate division, which has been heard. [*James Parker responds*:] We would disagree. That order doesn't say that. It says "until the appeal is heard," and any reasonable person who is a non-attorney can assume, since we have often heard the term, "I am going to appeal up to the Supreme Court," and that would include an appeal up to the Supreme Court. We could have reasonably construed from that sentence that's what you meant, because you did not say, "until the appeal was heard before Sonoma County." You referenced it, but that hearing that you are referencing hadn't even been set when you wrote that order there, so we could not assume in any way you were referencing an appeal whose date hadn't even been set yet, so it is reasonable for us – we defendants here – to assume you meant the entire appeals process, up to and through the Supreme Court. And yes, that would be the answer to your question; that is how we interpreted that document. (Ibid at 18:27 to 19:23) [*The Court says of its July 23, 2008 stay order*:] this order this was to be stayed until the appeal was over, and that appeal is over. So, that would only apply to the appeal discussed in the order. So, it takes us back – The bottom line is, there is no stay on this hearing. [*James Parker reasserts*:] Your Honor,

> respectfully, I would object to your rationalization of your own order. That may be your rationalization, but that last sentence of that document doesn't say "until **that** appeal is heard" it says, "until **the** appeal is heard." And it is reasonable for people who are not attorneys to extrapolate from that you mean the entire appeals process. (Ibid at 20:6-21) [*The Court replied:*] If for some reason you misunderstood it, I am telling you the Court intended that to refer to that appeal. Therefore, this order would not be a stay to proceeding today. I want to give you an-other opportunity to consider whether you are going to answer the questions. (Ibid at 21:9-14)

Mr. Parker, the contemptor, was notified specifically that the court found him in contempt and was in fact found guilty of contempt. The court heard and considered the contemptor's explanation and reason for his refusal to answer the questions and rejected the arguments because it had previously been ordered in this matter that Michael Halliwell was not allowed to represent Mr. Parker at the hearing. The stay previously issued by this court was specifically limited in its language to a hearing to be held in the Appellate Division of the Sonoma County Superior Court. That hearing has been held and the contemptor's appeal of the order of attorneys' fees was denied. The court heard and consid-

ered the other arguments presented by Mr. Parker challenging this court's ability to proceed with this hearing and rejected said arguments. There is no stay of enforcement of the award in effect and the hearing is not premature.

[*The Court moved forward with the OEX process*:]

At this time, then, I am going to order you to go to the witness stand and be sworn in as a witness. [*James Parker responded*:] Your Honor, I respectfully decline to be sworn in. I will be happy to go sit up there and we can have a discussion, but I am not going to give up my constitutional rights because you say so. I have a right to do research on your reasoning and reply to why your reasoning might be incorrect. [*The Court replied*:] And you realize, sir, that your refusal to answer these questions exposes you to a monetary fine, time in jail or both? [*James Parker answered*:] Well, I do not believe this Court has any jurisdiction, frankly, to issue any order at this time because of the reasons why I explained. I hear what you are saying, but I do not believe you have the authority at this time to do that. (Ibid at 26:9-26) [*The Court explained its ruling*:] The Court has ordered you to answer the questions, Mr. Jensen has. You have refused to do so. You have told the Court you will not do that, so the Court finds you in contempt. You were warned about what would happen if you refused to answer the questions. Your refusal to answer those questions, which the Court judges to be contempt of court, happened in the

> immediate view and presence of the Court. You have been given an opportunity to explain why you are refusing to do it; any defense you have or mitigating circumstances. Therefore, having heard those arguments, the Court disagrees, and therefore the Court finds you guilty of contempt. The Court will at this time impose three days county jail. (Ibid at 27:5-18)

After due consideration, the Court found that, beyond a reasonable doubt, that the contemptor's action was in contempt of court and he was adjudged guilty of contempt of court in violation of Code of Civil Procedure § 1209(a)(5). James Parker, the contemptor, is sentenced to spend three days in the County Jail. Execution of this sentence is stayed to January 6, 2009, at 8:30 a.m. in Courtroom 21 of this court. James Parker, the contemptor, is ordered to return at that date and time. If James Parker, the contemptor, is willing to answer the questions of counsel for Judgment Creditor at that time, the court will vacate the three-day in custody sentence.

IT IS SO ORDERED.

DATED: December 22, 2008

ROBERT S. BOYD
Judge of the Superior Court

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY January 6, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JAN 8 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 1/20/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Parties address the Court. [James Parker explains California Supreme Court filing rules, which allow Defendants to file within 10 days of the First Circuit Court of Appeal January 2, 2009 denial of their Petition for a Writ of Mandate, 20 days after that for opposing parties to answer, and 10 days for the Petitioner to reply to any new points raised by the opposing parties.]

Court believes the current appeal is still pending, and there should be a stay of this proceeding. Court STAYS the imposition of (3) THREE DAYS County Jail sentence, in light of the pending Writ before the California Supreme Court. CONTINUED FROM 1/6/09 TO 1/20/09.

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY January 20, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JAN 21 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 3/17/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Parties address the Court. [James Parker says:] "This is the sixth time we hav. been here... it just seems to us that this is the most efficient way to do this, so this Court can decide if Mr. Jensen's argument is meritorious [about] jurisdiction." [Judge Boyd replies:] "All the creditor has to do is file a notice requesting a hearing date, and there is no procedural requirement that the creditor explain why that date is appropriate." (Transcript at 6:18 to 7:3) [Charles Jensen replies:] "I feel that a continuance without noticed motions and all the other folderal he requested is inherently within the Court to set, reserving all prior order for contempt, etc." (Ibid 8:9-12)

Defendant files motion to vacate hearing without prejudice re rescheduling after Supreme Court relinquishes jurisdiction Court vacates the finding of Contempt: "**So now that I am beginning to get a clearer picture of the whole story, not just this**

Court's role, which was enforcement of the judgment, I believe that the Court was premature in the finding of contempt. At this time I am going to vacate the finding of contempt, as that matter of enforcement of the $20,000 is on appeal." (Transcript at 18:2-8)

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY March 17, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs MAR 17 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 4/21/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Defendant submits written statement, and states this proceeding is premature. [James Parker argues:] "The first-and-most-clear-cut reason why enforcement of the $20,720 fees judgment is still premature and the defendants have a right to appeal to the U.S. Supreme Court, and we intend to exercise that right. At the bottom of the first page of our March 12, 2009 letter to [California] Chief Justice George is U.S. Supreme Court Rule, which provides 90 days after the denial of discretionary review for defendant to file a petition for certiorari in the U.S. Supreme Court. The March 9, 2009 letter from Senior Deputy Clerk of the California Supreme Court list potential starting dates for this 90-day period. The earliest due date for our petition for certiorari is 90 days after January 21st, 2009. If we file a petition consolidating our two adverse fees judgments, the deadlines for submission would be April 20th, 2009. If we file a separate petition for the $20,720 fees judgment, it would be due 28 days later,

90 days after February 18th, 2009 or May 18th, 2009. OEX proceedings sooner than these filing deadlines would interfere with preparations of our petitions for certiorari. The earliest that the $20,720 judgment would be enforceable would not be until several months after these deadlines, if the U.S. Supreme Court declined to review our case. Therefore, Your Honor, we feel that these – this hearing is still premature." (Transcript at 3:19 to 4:18) [Judge Boyd asked for Charles Jensen's response; he said:] "Removal to federal court requires that it be done in the beginning so that you preserve your right. The beginning of this case is now roughly a year and a half old. There are grounds if a removal or – of course not in front of the Court, so I won't get involved in the claims of federal rights." (Ibid 4:21-27)

Defendant refuses the Oath to be examined by counsel. [James Parker explains:] "The law requires we expend our State court rights of appeal before we go to the U.S. Supreme Court, Your Honor. This is what we are in the process of doing. Therefore, we do have the right to appeal to the U.S. Supreme Court as the right – as our right of due process to protect ourselves. So, therefore, if you insist that this is not the case, we do not feel that having me testify would be a lawful order and, therefore, I would decline at this time." (Ibid at 7:10-19)

Court advises Defendant his refusal to be examined would be found to be contempt of a Court Order. [Judge Boyd asks:] "Are you willing to provide the requested bank statements, et cetera, requested by Mr. Jensen? " (Ibid at 11:5-7) [James Parker replies:] "I am not at this time, Your Honor, because, respectfully, I feels that's an unlawful order.

Because we're in the middle of our appeal process, which is our due right to spend all appeals." (Ibid at 11:8-12) [Judge Boyd restated to Defendant:] "The Court has ordered, just for clarity, sir, simply to make it abundantly clear, I am ordering you to answer the written questions, provide the requested bank statements, provide the requested investment account information, and provide a copy of your driver's license. Are you willing to do that?" (Ibid at 12:13-19) [James Parker responded:] "Sir, I would ask that if I again wish not to do that, that you give us a stay to file an immediate appeal. If not that, at least a day's stay for me to enter jail, if that's what you're going to require me to do." (Ibid at 12:21-25) [Judge Boyd continued:] "Now having heard this Court order you to provide that information, are you willing to do so?" (Ibid at 12:26-28) [James Parker answered:] "I am not, sir." (Ibid at 13:1)

Defendant, having failed to be examined, is found in Contempt of Court in violation of Code of Civil Procedure section 1290(a)(5). Court sentences Defendant James Parker to serve three (3) DAYS in the Sonoma County Jail. Defendant is ordered to turn himself in to the Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. Defendant to be held in custody without bail for three DAYS. If Defendant complies with document request and examination by 3:00 p.m. Friday, March 20, 2009, Court to vacate the execution of this sentence.

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
MAR 17 2009

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER AND JUDGMENT OF CONTEMPT

JAMES PARKER, et al.,
Defendants

_____/

This matter came on regularly for hearing on the Order of Examination on March 17, 2009, at 8:30 a.m. before the Hon. Robert S. Boyd, Judge Presiding. Counsel Charles Jensen was present on behalf of Plaintiff/Judgment Creditor; Defendant/Judgment Debtor James Parker was present in pro per.

[*The Court summarized the information being sought*:]

> The appeal review now having been denied, the appeal comes back to the Court. So at this time, Mr. Parker, are you willing to answer the questions posed by Mr. Jensen, including turning over

> the bank records, filling out the written questionnaire, wanting the – reflecting bank records, and providing a copy of your California driver's license? (Transcript at 3:1-8) [*James Parker replied*:] "Well, Your Honor, we still feel that the hearing is premature." (Ibid at 3:9-10) [*Charles Jensen disagreed with Defendant*:] "The [$20,720 award] has been fully adjudicated. And, as the Court recalls at the last hearing here, they said, 'Well, because it's pending at the Supreme Court, we shouldn't go forward.' The Court accepted that. The Supreme Court has ruled on it. That matter is dead." (Ibid at 5:4-10) [*Charles Jensen explained*:] "We were continued to today's date because the State appeal was still pending as of the last hearing. The California Supreme Court ruled. It ruled. It had been denied. We are prepared to go forward." (Ibid at 5:17-21) [*The Court ruled*:] "I've not read the materials just handed to the Court, but at this time, the Court is not aware of any pending appeal or pending stays of the enforcement of the judgment. Therefore, the Court believes it appropriate now to proceed with enforcement. The intention to file an appeal has no bearing upon this Court's ability or the appropriateness of this Court, of course, having to go ahead and provide the judgment." (Ibid at 5:22 to 6:3)

In the immediate view and presence of the court, defendant/judgment debtor James Parker appeared before this court pursuant to an order or examination of a debt owed by defendant/judgment debtor to plaintiff/judgment creditor. Mr. Parker

was placed under oath and the court ordered him to answer the written questions provided by counsel for plaintiff/judgment creditor, provide copies of the requested bank statements, copies of statements on investment accounts, and his California driver's license. Mr. Parker refused to answer the questions. Mr. Parker was then warned by the Court that if he refused to answer the questions, he was exposing himself to a finding of contempt and the imposition of a fine not exceeding $1,000, or imprisonment not exceeding five days, or both. Mr. Parker, acknowledging that he had heard this warning, again refused to answer the questions ordered by the court to be answered. A full transcript containing this occurrence will be prepared and will be attached and made a part of this order and judgment as soon as available.

[*Defendants comment in their March 19, 2009 Update*:]

> On January 20, 2009, the Honorable Robert S. Boyd (acting on information from the California Supreme Court that the status of Defendant's appeal from a $20,720 fees award, S169634, would be decided no later than March 11, 2009) set a March 17, 2009 resumption date for OEX proceedings, whose focus is the enforcement of

> this $20,720 judgment. However, in part due to circum-stances set forth in our February 17, 2009 Mandamus Petition [S171792], the procedural posture of Defendants' case is not nearly as clear-cut as we and Judge Boyd hoped it would be at this juncture. (California Supreme Court filing re OEX Interference with Ongoing Appeal of Federal Issues at 1.)

The Court heard and considered Mr. Parker's explanation and reason for refusing to answer the questions. The court rejected such explanation and excuse because it was premised on Mr. Parker's statement he intended to file a writ of certiorari in the United States District Court attacking the validity of the judgment that the obligation to answer these questions was therefore premature.

> [*Defendants' March 19, 2009 Update comments*:]
>
> **We DO NOT believe that Judge Boyd has a dismissive attitude toward the Federal Due Process and Equal Protection guarantees set forth in the Bill of Rights and the Fourteenth Amendment.** However, Judge Boyd treated Defendants' attempts to seek enforcement of these rights *vis a vis* the $20,720 fees judgment, as being of little consequence (perhaps because he misconstrued our effort, as intending to start an inevitably time consuming action in Federal District Court, when in fact, we plan a direct appeal to the U.S. Supreme Court pur-

> suant to 28 U.S.C. Sec 1257, which has a 90 day filing deadline after denial of discretionary review by a State's highest court). (Id.at 2.)

The debt forming the basis of the order of examination is one of three judgments for attorney's fees ordered against Mr. Parker pursuant to his unsuccessful defense of an unlawful detainer action in 2007. A lengthy series of appeals of that court judgment, beginning with the Appellate Division of the Sonoma County Superior Court, and proceeding then to the First Appellate District of the Court of Appeal and then to the California Supreme Court, have all resulted in denials of petitions for review. The three California Supreme Court case numbers are S163276, S168827 and S169364. At this time there is no pending appeal nor stay issued against this court prohibiting it from hearing enforcement actions on the underlying debt.

The history of this matter is the following:

On April 14, 2008 [Judge Boyd probably means July 14, 2008], defendant James Parker was ordered by the court to answer written questions and provide copies of bank statements, investment accounts, and a copy of his California driver's license. The matter

was then continued to July 21, 2008, for an Order to Show Cause in re compliance with the court order.

On July 21, 2008, Mr. Parker's refusal to answer the questions was taken under submission and on July 23, 2008, an order was issued by the court staying the pending enforcement action on the debt to allow resolution of the Court of Appeal actions. [Judge Boyd in fact argued when OEX proceedings resumed, that his order DID NOT cover discretionary review by the Court of Appeal or Supreme Court.]

On December 15, 2008, Mr. Parker again declined to answer the questions. He was found in contempt pursuant to Code of Civil Procedure section 1290(a)(5) and an Order to Show Cause was set for December 19, 2008, for a hearing on why sanctions should not be imposed.

On December 19, 2008, Mr. Parker was found in contempt and ordered to serve three days in the county jail stayed to January 6, 2009.

On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009.

On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this

matter. The matter was put over to March 17, 2009, for further proceedings.

On March 17, 2009, Mr. Parker was again ordered to answer the questions and declined to do so. The court offered Mr. Parker an opportunity to present an explanation or excuse for his conduct which, as discussed above, the court found insufficient to provide a basis for refusing to answer the questions. All appeals have concluded with the denial of petitions for review. Therefore, the court finds Mr. Parker guilty of contempt of court in violation of Code of Civil Procedure section 1290(a)(5).

Mr. Parker is sentenced to serve three days in the county jail. [*The Court provided this alternative*:]

> One other thing I want to say. If the Court is advised by Mr. Jensen that between now and 5:00 p.m. on Friday, when the Court closes for the weekend, that you have changed your mind and agreed to provide the information, the Court will release you from the obligation to serve the jail sentence. I want to give you every opportunity to provide the information and not to put yourself in jail. So I will be here until 5:00 o'clock on Friday. And if I hear from Mr. Jensen that you have complied, I will release you from the obligation to go to jail. (Ibid at 13:17-28)

Mr. Parker is ordered to turn himself in to the

Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. [*James Parker said he would seek reconsideration*:]

> Would your Honor accept a motion for a stay on Friday morning? [*The Court asked*:] "A motion for a stay?" [*James Parker confirmed*:] "Right." [*The Court replied*:] "It would entirely depend upon the basis of the motion --" [*James Parker continued*:] "But you would be willing to accept –" [*The Court answered*:] "If you can convince the Court that there is a reason for the sentence to be stayed, the Court would review it. But you need to – I'm not sure what that would be." (Ibid at 15:13-24)

Mr. Parker is to be held in custody without bail for three days. [Defendant's Affidavit re Issues Raised in March 17, 2009 and March 20, 2009 Order of Examination Proceedings affirms:]

> At the Tuesday, March 17, 2009 OEX hearing, after imposing a contempt finding and three day jail sentence on James Parker (to start at 7 PM on Friday, March 20, 2009), Judge Boyd agreed to consider any last minute arguments Defendants were able to put together on Friday morning March 20, 2009. While we cannot quote Judge Boyd's exact words (because the transcript is not yet available), there is nothing in what he said to indicate that he would not allow oral argument as part of his process of consideration. When Judge Boyd acted, he treated our March 20, 2009 motion as an Ex Parte submission, and denied it without comment (without allowing Defendant

Parker any opportunity to learn his reasons, much less discuss them. (Id. at 1:11-18)

IT IS SO ORDERED.

DATED: March 17, 2009

ROBERT S. BOYD
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

ENDORSED
FILED
MAR 20 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum Citing Grounds for Vacating Finding of Contempt and James Parker's Three Day Jail Sentence

The main focus of today's Defendants' motion to vacate is related to our upcoming filing of a Petition for Certiorari in the United States Supreme Court, but is more limited than the motion we offered on March 17, 2009. In this motion we seek only to protect our ability to research and prepare this Petition without interference, even though we continue to feel that it would be appropriate to await the outcome of this Petition, before undertaking any enforcement action relating to the $20,720 fees judgment (which our Petition will show is violative of our Fourteenth Amendment Due Process rights). This matter is squarely within the ambit of our

"Extra Front Squeeze" complaint raised in our February 17, 2009 Petition for Mandamus (S170538), even though the impetus for this Petition was interference with our appeal rights by Judge Rushing, not this Court's OEX proceedings. See *Varian Medical Systems* (Appendix H, Note 21.161).

I. INTRODUCTION AND CONTEXT

Appendix H (at 40-41) give the full text of this Court's Order of July 23, 2008 (in its context of ongoing developments in the case). The most important line in that Order states: "the court now having received the various documents provided by the parties and more importantly reviewed the court file of the matter." In its previous contempt findings (which were vacated because the court granted Defendants' motion challenging jurisdiction "pursuant to the authority of Code of Civil Procedure section 916"), this Court considered the statutes and caselaw cited by Defendants, and called them back to find out if we were determined to stick to our position that the Court's order was unlawful (as is EVERY order issued by a court that acts outside the limits of its jurisdiction).

Moreover, this Court had a transcript in hand which clearly stated its original questions Defendant Parker declined to answer, before the questions were repeated at the next session and the possibility of issuance of a contempt finding was raised. Here, everything is combined into a single proceeding, and the Court's Order of March 17, 2007 says (1:28 to 2:2): "A full transcript of this proceeding containing this occurrence will be prepared and will be attached and made part of this order and judgment as soon as available." Defendants believe that a finding of direct contempt must be based on an actual transcript, not issued in anticipation of a transcript, but supported at the time of issuance only by the Court's memory (in a context where the actual words are very important). The Court's order of March 17, 2009 says (3:3-5): "On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009. On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this matter." We still have a pending appeal (S170538) which may be procedurally relevant to any proceedings which may interfere with our exercise of our Federal appellate rights (as

will be explained in the closing section). However, regardless of all other considerations, we believe that the two week interval allowed by the Court before taking its most recent action is essential to achieving justice AND saving time for all concerned, in the long run.

Before proceeding further, we offer a line-by line analysis of the March 17, 2009 Order.

II. ANALYSIS OF STATEMENT OF CASE AND COURT'S FINDINGS

A. Opening Statement of the Order of March 17, 2009

> This matter came on regularly for hearing on the Order of Examination on March 17, 2009, at 8:30 a.m. before the Hon. Robert S. Boyd, Judge Presiding. Counsel Charles Jensen was present on behalf of Plaintiff/ Judgment Creditor; Defendant/Judgment Debtor James Parker was present in pro per. (Transcript at 1:14-17)

Co-Defendant Michael Halliwell was also present, and must reimburse Defendant Parker for any fees he pays, according to a long standing agreement that is as binding as any contractual fees obligation that James Parker may be thought to have under the rental agreement (see *Nelson v Adams* parallel in Note 10.74, in Appendix H). But in accordance

with the Court's continuing policy, Defendant Halliwell was silenced and not even allowed to sit at the Defendants' table. This exclusion was appealed, and our December 22, 2008 Notice of Appeal was acknowledged by the Appellate Branch that same day. Since a court cannot (consistent with CCP Sec 916) take action on any aspect of a case covered by an appeal, it cannot continue to conduct proceedings in a manner violative of Defendants' right to conduct their own case (see *Gray v Justice's Court* citation in Note 7.45 of Appendix H).

B. Scope of Parker's Refusal to Answer Questions

> In the immediate view and presence of the court, defendant/judgment debtor James Parker appeared before this court pursuant to an order of examination of a debt owed by defendant/ judgment debtor to plaintiff/judgment creditor. Mr. Parker was placed under oath and the court ordered him to answer **1)?** the written questions provided by counsel for plaintiff/judgment creditor, **2)** provide copies of the requested bank statements, **3)** copies of investment accounts, and **4)** his California driver's license. Mr. Parker refused to answer the questions. (Ibid at 1:18-24)

1)? There have been several attempts by Charles Jensen to force Defendant James Parker to answer his questionnaire, which Defendants feel has no

official status, and therefore requires an item-by-item authorization by the court. Most recently, Charles Jensen tried to "get the ball rolling" on this matter at the conclusion of proceedings on January 20, 2007, but the Court suggested he defer his effort until the scheduled March 17, 2009 hearing. There was no court reporter at the first OEX hearing (conducted by Judge Andrea K. Ritchie), but James Parker answered numerous financial questions (including his income) until he drew the line at questions which had no real connection to his ability to pay, but were only designed to harass and degrade him. Charles Jensen falsely claimed that Judge Ritchie required James Parker to answer his questionnaire, but Judge Ritchie's Courtroom Minutes do not back up that claim. At one point, Judge Boyd's Courtroom Minutes reflected Charles Jensen's claim that the Court had ordered James Parker to answer his questionnaire. However, this inaccuracy was rectified as soon as the Transcript came out (which showed that it was Charles Jensen, and not Judge Boyd, who had tried to force James Parker to answer the questionnaire).

2-4) At the first hearing James Parker admitted that he had a car (landlord Gus Paxinos already has his driver's license number) and a bank account (whose account number, Charles Jensen already knows). Apparently, Charles Jensen is able to secure information on the amount of funds in the account, because he referred to it as having been "cleaned out" in his comments at the first OEX hearing). As is reflected in her Courtroom Minutes, Judge Ritchie asked James Parker only two questions which he refused to answer (about his driver's license number and his bank account number).

The questions which Judge Boyd required James Parker to answer under penalty of a contempt sanction covered no fresh ground. James Parker contends that Charles Jensen has no right to seek a contempt citation based on information he already has, has ready access to, or he has no reason to believe exists. On March 17th nothing from Charles Jensen's questionnaire was read by Judge Boyd into the record as part of his contempt warning. The entire scope of James Parker's refusal to answer questions (and many other aspects of the Order of

March 17th) cry out for a delay until the hearing transcript is available, the parties have had a chance to analyze the transcript, and to submit the results of their analysis to the court for its consideration.

C. Judge Boyd Warns re a Possible Contempt Finding

> Mr. Parker was then warned by the court that if he refused to answer the questions, he was exposing himself to a finding of contempt and the imposition of a fine not exceeding $1,000, or imprisonment not exceeding five days, or both. Mr. Parker acknowledging that he had heard this warning, again refused to answer the questions ordered by the court to be answered. A full transcript of this proceeding containing this occurrence will be prepared and will be attached and made part of this order and judgment as soon as available. (Ibid at 1:24 to 2:2)

James Parker asked several times whether he could be ordered back to jail again if he still refused to give answers to questions he felt were beyond the scope of the court's authority, but Judge Boyd did not give a clear answer. A fair warning to a Defendant facing a contempt finding, should explain the total penalty he faces. An important part of contempt procedures is the lawfulness of the order the court is seeking to enforce, and it is not fair to send a person (whose job situation does not make the

weekend favorable) to jail on late Friday, Saturday and Sunday, when there is limited access to courts, where the person being jailed might seek to challenge the legality of his sentence. It is also difficult to see why, when the maximum penalty is five days in jail, the seriousness of James Parker's offense warrants a three day sentence.

D. Minimizing Reasons Parker Refused to Answer

> The court heard and considered Mr. Parker's explanation and reason for refusing to answer the questions. The court rejected such explanation and excuse because it was premised on Mr. Parker's statement he intended to file a writ of certiorari in the United States District Court attacking the validity of the judgment that the obligation to answer these questions was therefore premature. (Ibid at 2:3-7)

The Defendant James Parker made it entirely clear (by calling the Court's attention to a specific Supreme Court rule which set the deadline, and throughout his discussion of the matter that he intended to appeal to the United States SUPREME Court. It was Charles Jensen who raised the possibility of filing an action in Federal District Court, when he (falsely) claimed that the only way to secure federal review of Defendants' federal

grievances would have been to seek transfer to a Federal District Court, at the outset of litigation.

The statement in the Order of March 17th ignores the complicated matter of the proper application of California Supreme Court rules. If Defendants are successful (this matter is likely to be resolved soon) in showing that the 60 day period of California Supreme Court jurisdiction, starting with the filing of the last petition for Certiorari (on January 12, 2009), has been unfairly shortened by a court clerks error, they would be eligible for corrective action which might extend the High Court's jurisdiction up to thirty more days (under CRC 8.512(b)(1). When Judge Boyd asked the California Supreme Court how long it might take for it to decide on whether to review S169634, he was told (and announced in open court) that it might be as long as March 11, 2009. (The remaining 48 hours until the 60 day limit, are apparently reserved for action under the High Court's power set forth in CRC 8.512(c)(2) to act *sua sponte* to reverse a denial of review. If the High Court were to consider the March 6, 2009 and March 12, 2009 materials (resubmitted on March 19, 2009 as part of our Mandamus Update in S170538) to be

sufficiently persuasive, they could use their broad mandamus power to reopen the question of review, and use their power to remand to another court (such as the First District Court of Appeal) to reopen the $20,720 attorney's fees issue (or even take the unlikely step of reviewing this matter themselves).

The order of March 17th also ignores Defendants' third basis for claiming that immediate resumption of OEX proceedings would be premature (interference with other aspects of the case with overlapping schedules of consideration). How to deal with this situation is the focus of our Mandamus appeal (S170538), and is the focus of Defendants' motion in Section III.

E. Fairness requires letting Defendants run their case.

The debt forming the basis of the order of examination is one of three judgments for attorney's fees ordered against Mr. Parker pursuant to his unsuccessful defense of the unlawful detainer action in 2007. A lengthy series of appeals of that court judgment, beginning with the Appellate Division of the Sonoma County Superior Court, and proceeding then to the First Appellate District of the Court of Appeal and then to the California Supreme Court, have all resulted in denials of petitions for review. The three California Supreme Court case numbers are

> S163276, S168827 and S169634. At this time, there is no pending appeal nor stay issued against this court prohibiting it from hearing enforcement action on the underlying debt. (Ibid at 2:8-16)

The fact that Defendant Halliwell provided nearly all of the unsuccessful defense of the unlawful detainer action in 2007, makes it especially inappropriate for disallowing him from participation in fees issues which arose from this defense, and our inextricably intertwined with it. The repeated adjournments and restarts in OEX proceedings are a direct result of the edict requiring defendants to "change horses in the middle of a stream," and have definitely been a hindrance (see Note 7.45 in Appendix H) to Defendant Parker's handling the defense all by him self, thereby satisfying the third prong of the *Powers v Ohio* test for *jus tertii* (indirect injury standing). The other two prongs of the *Powers* criteria, are closeness of relationship (being evicted together) and injury in fact (no one disputes the reality and long duration of Defendants' cost sharing agreement). As of 4:30 PM on March 19, 2009, when Defendants made their Update filing at

the California Supreme Court in San Francisco, S170538 was still pending.

F. As July 23, 2008 Order held, OEX was premature

> The history of this mater is the following: On April 14 2008, defendant James Parker was ordered by the court to answer written questions and provide copies of bank statements, investment accounts, and a copy of his driver's license. The matter was then continued to July 21, 2008 for an order to show cause in re compliance of with the court order. On July 21, 2008, Mr. Parker's refusal to answer the questions was taken under submission and on July 23, 2008, an order was issued by the court staying the pending enforcement action on the debt to allow resolution of the Court of Appeal actions. (Ibid at 2:17-24)

This court fully understands that state court rulings at any level can be overturned by an order of the United States Supreme Court. Don't Appendices G and H show that there are an abundance of federal aspects relating to the fees issues in dispute? Why isn't this sort of resolution given the same respect, by this court, as a ruling by the California Supreme Court?

G. On January 20, 2009 OEX was STILL premature

> On December 15, 2008, Mr. Parker again declined to answer the questions. He was found

> in contempt pursuant to Code of Civil Procedure section 1290(a)(5) and an Order to Show Cause was set for December 19, 2008, for a hearing on why sanctions should not be imposed. On December 19, 2008, Mr. Parker was found in contempt and ordered to serve three days in the county jail stayed to January 6, 2006. On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009. On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this matter. The matter was put over to March 17, 2009, for further proceedings. (2:25 to 3:7)

Would it be fair to say that all the ordeal that James Parker was put through by premature OEX proceedings, was on account of contempt of Statute and Caselaw on the part of Sonoma County Superior Court jurists? Why is it fair to attribute a contemptuous attitude to James Parker, rather than give a fair examination to his reasons for believing that the law is on his side, in spite of all the judges on the other side? Whatever happened to the decent respect for the opinions of mankind which is proclaimed in the American Declaration of Independence? Why not continue the process of examining the underlying legal issues in an orderly way, instead of a rush to justice which implicitly blames James Parker for all the past delays?

H. What governing precedent supports this ruling?

On March 17, 2009, Mr. Parker was again ordered to answer the questions and declined to do so. The court offered Mr. Parker an opportunity to present an explanation or excuse for his conduct which, as discussed above, the court found insufficient to provide a basis for refusing to answer the questions. All appeals have concluded with a denial of petitions for review. Therefore, the court finds Mr. Parker guilty of contempt of court in violation of Code of Civil Procedure section 1290(a)(5). Mr. Parker is sentenced to serve three days in the county jail. Mr. Parker is ordered to turn himself in to the Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. Mr. Parker is to be held in custody without bail for three days. IT IS SO ORDERED. (Ibid at 3:8-19)

III. DEFENDANTS' STAY MOTION

As nonlawyers, Defendants have to discover the law as they go along. Even so, they have put together a Petition for Mandamus that has survived since February 17, 2009 in the California Supreme Court. Compare this to the SAME day rejection of Defendants' Mandamus Petition to the First District Court of Appeal, in what became S169634. It would certainly appear that there is something worthy of consider-ation here, and Defendants hereby seek

postponement of further OEX proceedings, while S170538 remains alive in the California Supreme Court. Their authority for this motion is *Varian Medical Systems, Inc. v Delfino* (2005) 35 Cal 4th 180, 190:

> A trial court proceeding also affects the effectiveness of an appeal *if the possible outcomes on appeal and the actual or possible results of the proceeding are irreconcilable.* .... Finally, a proceeding affects the effectiveness of the appeal *if the very purpose of the appeal is the avoid the need for the proceeding.* In that situation, *the proceeding* itself is inherently inconsistent with a possible outcome on appeal and *must therefore be stayed under section 916, subdivision (a).*

Dated: this 20th day of March, 2009

Michael Halliwell Defendant pro se	James Parker Defendant pro se

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
APR 17 2009

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER VACATING HEARING ON APRIL 21, 2007

JAMES PARKER, et al.,
Defendants

_____/

This court, on its own motion, hereby VACATES the hearing scheduled for April 21, 2009, at 8:30 a.m. in Courtroom 17, as premature and unnecessary.

The creditor is to initiate further proceedings in this matter if desired.

IT IS SO ORDERED.

DATED: April 17, 2009

ROBERT S. BOYD
Judge of the Superior Court

E. $20,720 Brief-Reading-Only Attorney Fee

1. Defendants' 4/30/08 plea to delay fees hearing. **120**

2. Judge Rushing's 5/6/08 $20,720 Fees Award. . **122**

3. Defendants' 5/27/08 fees award Appeal Notice. **123**

4 5/6/08 Hearing Transcript available on 9/15/08 **125**

5.Defendants 10/14/08,11/5/08 re 2-front squeeze **129**

6. Evasions preceding the 11/20/08 fees hearing . **133**

7. 12/5/08 Order upholds $20,720 Fees Award. . . **135**

8. Court of Appeal 1/2/09 Mandamus Denial. . . . **137**

9. Appellate Branch 1/5/09 Rehearing Denial . . . **138**

10. Appellants' 1/12/09 judicial evasions protest . **139**

11. Appellants'1/12/09 concealed censure protest **142**

12. Supreme Court 2/18/09 Denial of Review. . . . **146**

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
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'08 APR 30
1:02 pm
Sonoma County
Superior Court

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	No. MCV-191306 **Unlawful Detainer** **Filed 6/1/07** Defendants' Petition to Presiding Judge Owen to Postpone May 6, 2008 Attorney's Fees Hearing

This Petition seeks postponement of all motions and appeals concerning attorney fees until serious impediments to Defendants' ability to respond (relating to the status of the Case File are removed). The major obstacle facing Defendants is the prolonged delay in consideration of their Appeal of November 21, 2007, for which they seek clarification and some follow-through on a commitment which they received from the Chief Appeals Clerk (that a Chronological Index would be prepared as soon as possible, and that a revised briefing schedule would be promptly sent out).

Defendants unsuccessfully sought a copy of a February 5, 2008 Appellate Branch ruling which

formalized the under-standing with the Chief Appeals Clerk, but the Case File was unavailable (due to preparation of the Chronological Index, so all they could obtain on this subject was the attached title listing of ORDER VACATING NOTICE OF TIME AND PLACE TO FILE BRIEFS (FILED 1/14/08) printout from the computer).

Dated: this 30th day of April, 2008

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

Charles T. Jensen SBN 69044
Kadin Blonski SBN 244856
1622 4th St. Santa Rosa, 95404
707-527-9911 Fax:707-527-0908

ENDORSED FILED
MAY 6 2008

Attorney for Plaintiff
Chrysanthe Paxinos

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos) Case No. MCV-191306
Plaintiff, vs.) (Unlawful Detainer Case)

James Parker et al.) JUDGMENT AFTER MOTION
Defendants.)

Plaintiff CHRYSANTHE E. PAXINOS's motion for attorney's fees came on for hearing, Tuesday May 06, 2008, in Department 19 of the above court, the Honorable ELAINE RUSHING, Judge presiding. A tentative ruling was issued and the Defendant requested oral argument. The Plaintiff was represented by Kadin W. Blonski and Charles T. Jensen, the Defendant JAMES PARKER represented himself. After oral argument, decision was given in open court, the above parties present.

The Plaintiff's motion for attorneys fees for Plaintiff CHRYSANTHE E. PAXINOS as to Defendant JAMES PARKER only is granted in the amount of $20, 680.00 and $40.00 for filing fee.

Dated: May 6, 2008

_____
Honorable ELAINE RUSHING
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
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ENDORSED
FILED
MAY 27 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Notice of Appeal re May 6, 2008 Fees Award and Analysis of Specific Billing Items

Defendants James Parker and Michael Halliwell hereby appeal the May 6, 2008 award of $20,680 in attorney's fees and $40 for filing fee by Judge Elaine Rushing, on both procedural and substantive grounds. Since Charles Jensen's successful motion seeking this award was an across-the-board challenge to Defendants' filings, the only effective recourse in the present circumstance is an across-the-board defense. (See specific quotations *infra* from every one of the documents which Respondent dismisses as "whimsy, dribble and nonsense.") Charles Jensen did not file ANYTHING as a result of the reading for which he seeks payment, which is allocated proportionally by $ amounts following each Case

Record (CR) citation. Nor did he say ANYTHING related to these filings at the January 24, 2008 Appeal Hearing. (See accompanying January 24, 2008 Hearing Transcript Appendix.) Charles Jensen's basis for seeking payment is: "Defendant's forced plaintiff's counsel to read all his papers. Unfortunately counsel was not in a position to assume they were all a joke. An old Irish saying states 'even a blind pig can find a truffle every now and then.'" *Serrano v Unruh* (1982)32 Cal 3d 621, 635 holds that "[A party's obligation to pay fees should not produce] a 'Hobson's choice' designed to prevent their voicing legitimate objections." At the May 6, 2008 hearing Charles Jensen refused to identify ANYTHING in Defendants' filings which did not fit within this "safe harbor." Accordingly, Charles Jensen, WHO DID NOT SEEK ANY COMPENSATION IN HIS SUPPORTING MOTION FOR HIS OWN PREPARATION OF DOCUMENTS, **is NOT entitled to any fees at all for his work in the appellate proceedings in this case.**

Dated: this 27th day of May, 2008

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
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TRANSCRIPT FILED
SEP 15 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Defendants' Analysis
of May 6, 2008 Hearing
Transcript

Trial Court and Court of Appeal Fees Evasions

Because Judge Rushing's $20,720 fees award consists entirely of a reading fee (there is absolutely no work product claimed, nor any attendance at hearings) all the issues in her first fees award reappear as Charles Jensen now demands to be paid for reading briefs primarily directed at trying to get the fees adjudication process properly on track. Just how far a field from normal standards of awarding attorney's fees Charles Jensen and Judge Rushing are, is clear from this "closest approach" to the merits at the May 6, 2008 fees hearing. James Parker analyzes Charles Jensen's charges:

> I want to read a quote here and – in a March 26th document which was the perfunctory opposition

to reconsideration, Charles Jensen had a very dismissive tone, and he's always had a very dismissive tone to us as though we're nothing and nobody. Let me read this, if I may, Your Honor. Charles Jensen's dismissive tone continues in his March 26th 2008 perfunctory opposition to reconsideration where he refers to defendants' completely accurate quotations and citations, which are cross-indexed as thoroughly as time permitted us to be able to do as, quote "whimsy, dribble and nonsense," unquote.

He continues: "Nowhere were there or are there cohesive legal thinking and conclusions based on law and the facts of this case," end quote. In his effort to justify $20,000 in additional fees for this sort of work product, Charles Jensen's recent motions without proof of service declares without a semblance of any supporting examples – one last sentence and then a question. And this is what he wrote: "Defendants forced plaintiff's counsel to read all of his papers. Unfortunately, counsel was not in a position to assume they were all a joke. An old Irish saying states: 'Even a blind pig can find a truffle every now and then.' These were not easy papers to read either. The arguments, and the term is used loosely, we they were disorganized and incoherent at best."

First of all, defendants resent being likened to pigs finding a truffle. This has been his attitude towards us all along, that we were nothing but scum, but that's neither here nor there. But the point is he's never – he's never controverted with law any of the citations that we have – that we've briefed – briefed him on. All he has said is

> they're "dribble, nonsense and whimsy" so I would like to ask the Court to ask him what percentage of those citations that we issued -- what fraction are "whimsy, dribble and nonsense?" (Transcript at 16:9 to 17:14)

Judge Rushing answered: "I'm not going to ask that question." (Transcript at 17:15-16) James Parker replied: "One last thing, then. Okay. I would just like to ask one more question. Can he now cite any one citation that's "whimsy, dribble and nonsense?" Judge Rushing said: "I'm not going to force him to do that." (Transcript at 17:20) James Parker resumed: "Defendants take exception to that because – all his argument is it's all garbage. He's never controverted a single one of our citations, and they are scholarly, and they're well documented." (Transcript at 21-24)

Defendants haven't had the slightest success in dislodging the First District Court of Appeal from its posture of total silence in the face of Judge Rushing's flimsy and evasive process of adjudication of the fees issue. Here is what Defendants say on the Face Sheet of their November 19, 2008 Petition for Mandamus (in A123266):

If for any reason a Superior Court is permeated

with animus toward litigants *in propria persona*, no one would doubt that its Appellate Branch would be easily able to run circles around even the most intensive effort by *Pro Per* defendants to defend their rights. (Self represented plaintiffs at least are able to choose their own legal ground.) Defendants who are assaulted by an unethical attorney in an unlawful detainer case have very little opportunity to learn what they must quickly enough to make tenants' rights a living reality. Their first line of defense must be a trial judge committed to the rule of law. If instead their case is assigned to a judge who has been censured for her dishonesty by the Commission on Judicial Performance (who has admitted to favoritism in her courtroom as part of a plea bargain to avoid consideration of the possibility of her removal from the bench), they are utterly at the mercy of an Appellate Branch whose intent is to provide a musk ox style stockade defense for a wounded colleague. That procedural evasions are the order of the day, not any sincere belief by the Appellate Branch that the rulings of the trial court are legally proper, should be evident from comparing the history of the case (summarized in Parts I, II and III, *infra*) with the refusal to confront Appellants' charges that comes across so clearly in Respondent's evasive Opposition Brief. The only effective remedy in the present circumstances is a writ of Mandamus ordering the Appellate Branch to vacate its unexplained Order of October 7, 2008, and also directing the Presiding Judge of the Sonoma County Superior Court to make arrangements for a replacement hearing conducted in accordance with Due Process of Law.

James Parker & Michael Halliwell
Defendants in Propria Persona
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TWO-FRONT SQUEEZE
OCT/NOV 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Defendants' Overload from Overlapping Time for Brief Preparation

Defendants' February 2, 2009 Petition to Presiding Judge Owen protested an ongoing "two/three front war" involving $10,118, $20,720 fees and OEX proceedings. Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition complains: Judge Chouteau stalls when it hurts Defendants, acts swiftly when it hurts them.

Defendants' November 5th Appendix re May 6, 2008 Transcript (5:8-14) states:

> In his October 27, 2008 Reply Brief (LNT at 9:18-19) Charles Jensen asserts: "There has been no intent on the part of counsel to rob these litigants of due process." This is a reference to James Parker's protest at the May 6, 2008 hearing that Charles Jensen "brought a two-pronged attack against us" in deliberately timing his $20,720 fees motion so that it would reach a critical

> juncture when defendants faced crucial filing deadlines with respect to Judge Rushing's earlier award of $10,000 in attorney's fees (Transcript at 6:8-10). Plaintiff's co-counsel Kadin Blonski responded "we're under no obligation to time our motions to go along with whatever they have going on." (Transcript at 9:18-20) Mr. Blonski also added this false statement in support of his two-pronged tactic: "There's been no motion at all for a continuance other than what was just made orally." (Transcript at 9:14-15) Charles Jensen knew this to be false because he received a copy of Defendants' April 30, 2008 Petition to Postpone May 6, 2008 Hearing on Attorneys Fees (CI 3710-3714). (See Item #8 of Transcript Analysis.)

Our Motion for Rehearing re Order of December 5, 2008 (25:16 to 26:8) says: Our October 14, 2008 Petition for Proper Briefing Prior to Appeal Rulings says:

> Since litigants in *pro per* must learn the law as they go along, it is very difficult for them to "keep their heads above water" when they are forced to fight a two (or three) front war. The scheduling of a $20,000-plus attorney's motion so that its briefing and hearing (March 25, 2008 to May 6, 2008) overlapped the filing deadlines for higher court review of their July 24, 2007 appeal of pre-trial and trial issues and briefing on Judge Rushing's off-the-record transfer of $10,118 of Defendants' funds to Charles Jensen. <u>This confluence of deadlines did not have to occur.</u> **a)** It took until November 5, 2007 for a briefing order to be issued for Defendants' July 24, 2007

appeal.[1] **b)** The listing in the Chronological Index for the 1/14/2008 briefing order which originally set a June 26, 2008 hearing date for Defendants' November 21, 2007 Appeal has the correct date, but it also lists this order as "Notice of Time and Place for Filing Griefs."

This briefing was aborted on account of a dispute over a missing Chronological Index, noted in Judge Chouteau's order of February 5, 2008 (CI 03412). It took until May 13, 2008 to get the Chronological Index updated and briefing re-instated. (For some reason this briefing order is not included in a later edition of the Chronological Index up through 8/29/08.) **c)** Judge Chouteau took no action for more than two months on Defendants' February 4, 2007 "Petition to Presiding Judge Knoel Owen re No-Notice Change in Policy Allowing Copies of Filings in Record Designations" (CI 03198), which had been referred to him. (The Court Clerks would not say who they meant by "the judges don't like it" with respect to disallowing the use of CR numbering by Defendants, but Supervising Judge of the Civil Division Elaine Rushing bears responsibility for this decision, and her file manipulation was the reason why Defendants felt obliged to institute their CR numbering.) On April 18, 2008 Judge Chouteau signed an order saying: "Appellants Petition re No-Notice Change is denied." (CI 03991) However, this order was not filed and served on the parties until May 23, 2008. **d)** On April 30, 2008, in full compliance with everything the window clerks asked of them, Defendants filed their "Petition to Presiding Judge Knoel Owen to Postpone May 6, 2008 Hearing on

Attorneys Fees." The window clerks informed Defendants to check Box 73 in the Hall of Justice for a response. They checked Box 73 repeatedly up until the May 6, 2008 hearing was upon them, but no action was apparently taken on this motion. (Id. at 62:2 to 63:5)

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com # MCV 191306

HEARING
NOV 20 2008

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Interlocking Attorney
Fees Maneuvers Used
against Defendants

Evasions leading up to 11/20/08 fees hearing

The Appellate Branch went from one evasion to another in its effort to avoid squarely addressing the fees issue. After it decided that "reaching out" to deal with this issue **before** the underlying transcripts were available for briefing, would not pass the "smell test", it decided to try to undermine Defendants' motion directed against their October 7, 2008 written Ruling After Appeal, by treating its September 25, 2008 bench ruling as being the linchpin for the allowable period for petitioning for a rehearing. This is proclaimed in its November 17, 2008 Ruling on Petition for Rehearing: "The Petitions For Rehearing (erroneously titled Motion

For Reconsideration) is denied. The decision became final on October 24, 2008 and any motion for rehearing is deemed denied as of that date. Alternatively, the petition lacks merit and is denied on that basis." This November 17, 2008 Ruling was **delayed** so that it was impossible to challenge it in the First District Court of Appeal before the deadline for appeal there, and this Ruling was cited by Respondent as grounds for establishing Res Judicata for the $10,118 fees award (and for justifying the $20,720 reading-only-fee device used to penalize Defendants for documenting and analyzing this aspect of the case, to try to preserve the possibility of effective upper-level state and federal review).

FILED

DEC – 5 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
APPELLATE DEPARTMENT

CHRYSTANTHE PAXINOS,	)	
	)	No. MCV-191306
Respondent/Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
JAMES PARKER, et al.,	)	
	)	
Appellant/Defendant.	)	
	)	

This matter was set for oral argument on the appellate calendar of November 20, 2008. Seated en banc were the Honorable Rene Auguste Chouteau, presiding, the Honorable Dana Beernink Simonds and the Honorable James Bertoli. Charles Jensen, Esq. was present on behalf of the plaintiff/ respondent. James Parker and Michael Halliwell defendants/appellants in pro per were present

The trial court's attorney fee Order is **AFFIRMED**. De novo review indicates that an award of attorney's fees was proper and review of

the record under the abuse of discretion standards indicates that the amount of attorney's fees is also proper.

Dated: November 24, 2008

Per Curiam

RENE AUGUSTE CHOUTEAU
Presiding Judge Appellate Dept

DANA BEERNINK SIMONDS
Judge of the Superior Court

JAMES BERTOLI
Judge of the Superior Court

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED

JAN 2 2009

MICHAEL HALLIWELL, et al.	)	
Petitioner,	)	A123622
v.	)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA,	)	
Respondent;	)	
CHRYSTANTHE PAXINOS,	)	
Real Party in Interest.	)	

Sonoma County
Superior Court
No. MCV-191306

BY THE COURT:

The petition for writ of mandate is denied.

Dated: Jan 2 2009 KLINE, P.J.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA **FILED**
APPELLATE DEPARTMENT **JAN 5 2009**

CHRYSTANTHE PAXINOS)	No. MCV-191306
Respondent/Plaintiff,	) RULING ON DEFENDANTS/APPELLANTS' MOTION FOR REHEARING RE DENIAL OF THEIR MAY 28, 2008 APPEAL
v.	
JAMES PARKER, et al.,	
Appellant/Defendant.	

Defendants' petition filed December 5, 2008 for the appeal heard by the Appellate Panel on November 20, 2008 is DENIED.

Dated: December 31, 2008

Per Curiam

RENE AUGUSTE CHOUTEAU
Judge of the Superior Court

DANA BEERNINK SIMONDS
Judge of the Superior Court

JAMES BERTOLI
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
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ENDORSED
FILED
JAN 12 2009
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Appellants' Authorities
Supporting Reversal of
First District 1/2/09 Order

Defendants' Petition to Review (S169634) the $20,720 reading fee award (at 15-16), cites Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition. *Gamet v Blanchard* (2001) 91 Cal.App.4th 1276, 1283, grants Gamet relief:

> We conclude there was an abuse of discretion because of a combination of events. Nowhere in the record is there any indication the trial judge gave any consideration to Gamet's alleged personal and family traumas. The judge's comments that he could "jam" Gamet and that he wanted to "keep the heat on," when combined with the unexplained judgment dismissing the action shortly thereafter, seemed arbitrary and created the appearance of substantial unfairness. While keeping cases moving through the court system and preventing unreasonable delay is certainly an important goal, it is a goal meant to serve justice by resolving disputes as speedily as

> possible. When disposing of cases becomes an end in itself, justice and fairness can easily fall by the wayside, and it appears that is what happened here. (CR-755:21 to CR-756:9) (Id. at 37:10-16)

Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition cites their November 5, 2008 Appendix re May 6, 2008 Transcript (at 7:3-17), noting:

> In his October 27, 2008 Reply Brief (LNT at 5:4-5) Charles Jensen justifies Judge Rushing's $20,720 ruling in his favor, which described in detail who attended the May 6, 2008 Hearing but said NOTHING AT ALL about the underlying merits: "The order, as written completely out in appellant's opening brief is more than sufficient under the law." (See Item #14 of Transcript Analysis.) After Judge Rushing ordered James Parker to desist from speaking further, the bailiff moved in very close behind Mr. Parker and Judge Rushing rejected Defendant's protest at this intrusion into his personal space, saying: "He can stand wherever he likes." Judge Rushing gave no reason at all for her decision, saying: "I'm deeming this motion submitted. I am granting plaintiff's attorney's fees award of $20,680 in attorney's fees and $40 in costs for the bringing of this motion. We are now adjourned." (Transcript at 17:4-7) Charles Jensen argues in his October 27, 2008 Reply Brief (LNT at 4:2-3) that the handling of the case has been in conformity with all legal requirements, saying: "Talk about a situation where the phrase 'STOP THE

MADNESS' is more than appropriate." In a very different sense than Charles Jensen intends, his statement is endorsed by a governing precedent cited in Defendants' Notice of Appeal:

> Judicial absolutism is not a part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without a hearing. When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence where the truth lies, application of the appropriate laws to the facts found, and a rendition of a judgment accordingly. (*Estate of Buchman* (1954) 123 Cal.App.2d 546, 560) (Id. at 41:2 to 42:3)

Dated: this 12th day of January, 2009

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

James Parker & Michael Halliwell
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ENDORSED
FILED
JAN 12 2009
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Appellants' Authorities re Judge Rushing's Duty to Disclose Censure by CJP

Defendants' Petition to Review (S169634) the $20,720 reading fee award (at 15-16) says:

> Appellants' January 2nd First District Court of Appeal Mandamus Petition quotes Defendants' November 5, 2008 Appendix re May 6, 2008 Transcript concerning Judge Rushing's Censure by Commission on Judicial Performance. In his October 27, 2008 Opposition Brief all that Charles Jensen would say concerning Defendants' quotations from the Commission's Report and Bob Egelko's June 9, 2006 *San Francisco Chronicle* article on this subject was: "This allegation is offensive and should be admonished." Egelko discussed Judge Rushing's censure "for driving drunk, lying about it and trying to get preferential treatment" and said of the CJP Report: "Superior Court Judge Elaine Rushing's criminal conduct was 'utterly irreconcilable with minimum standards expected of a judge,' and her attempt to use the prestige of her office for

personal advantage was 'reprehensible.'" Defendants quoted the CJP Report: "None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal 3d 826, 865, that honesty is a 'minimum qualification' expected of every judge." Beyond Respondent's saying that he was offended, Charles Jensen said nothing to dispute Defendants' parallels between Judge Rushing's behavior in the incident for which she was censured, and their own experience in her courtroom. The parallel most relevant to Charles Jensen was the observation in the CJP Report that Judge Rushing told Officer Holeman "that in her courtroom she goes against court policies for CHP and other officers, and that he should extend that courtesy to her." (Id. at 42:5 to 43:21) (See discussion in Footnote #31 of how *Haworth v Superior Court* (2008) 164 Cal.App.4th 930, 942, requires advance disclosure of a judge's having been censured by the Commission on Judicial Performance, and how a party is allowed to exercise his right to recuse such a judge, and to invalidate any rulings made by that judge when no disclosure of the censure has been made.)

#31. Neither Judge Rushing nor Charles Jensen have disclosed his role re CJP censure

Haworth v Superior Court (2008) 164 Cal.App.4th 930, 942 requires censure disclosure, citing "the repeated statements of the Legislature and the courts that neutral arbitrators must he held under the same standard of impartiality as the judiciary." The

opinion notes, "Judge Gordon did not disclose his censure prior to the arbitration, as required by California Code of Civil Procedure Section 1281.9." (164 Cal.App.4th at 936)

Haworth explains: "[Respondent Court] found that a reasonable person advised of Judge Gordon's censure would entertain a doubt as to his impartiality, requiring disclosure pursuant to CCP Sec 1281.9." (Ibid) The opinion adds, "Moreover, judicial discipline varies depending on the severity of the misconduct, ranging from advisory letters to outright removal from the bench, and censure is one of the most severe forms of discipline available." (Id. at 942) The California Supreme Court observes in *In re Gordon* (1996) 13 Cal 4th 472, 473:

> The Commission on Judicial Performance has recommended that we publicly censure Norman W. Gordon, a judge of the Los Angeles County Superior Court, for engaging in "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (c)(2).) Judge Gordon has not challenged the commission's findings or recommendation.

Haworth, *supra*, concludes, by upholding the invalidation of Judge Gordon's ruling:

> In sum, the facts of this case are such that a reasonable person aware of the circumstances would harbor a doubt as to Judge Gordon's ability to be impartial, so

> disclosure was required. Accordingly, Respondent Court properly vacated the [ruling below]. (Id. at 944)

Dated: this 12th day of January, 2009

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

Court of Appeal, First Appellate District,
Div. 2 – No. A123622

S169634

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MICHAEL HALLWELL, et al., Petitioners,

v.

SUPERIOR COURT OF SONOMA COUNTY,

Respondent;

CHRYSANTHE PAXINOS, Real Party in Interest

The petition for review is denied.

SUPREME COURT
FILED
FEB 18 2009
Frederick K. Ohlrich, Clerk

George, C.J. was absent and did not participate.

CORRIGAN

Acting Chief Justice

136

(2)

Supreme Court, U.S.
FILED
09-172 MAY 19 2009
OFFICE OF THE CLERK

No. 09-

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME II

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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707-795-5526, halliwel@csulb.edu

May 18, 2009

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INTRODUCTION

This Supplement concerns rejection by Respondent from the court file[1], of Defendants' April 20, 2009 Petition for Certiorari in *Michael Halliwell & James Parker versus Superior Court of California, County of Sonoma*, a copy of which is required by Supreme Court Rule 29.3. Defendants sought reconsideration of the prior restraint order (pursuant to California Code of Civil Procedure § 391) on which this rejection is based, by the Superior Court. The Superior Court's prior restraint (whose April 17, 2009 Order to the Clerk of the Court at 1:26-27 covers "any document no matter how entitled or described in any existing case, or any appeal or request to the appellate division no matter how entitled") is overbroad within the meaning of *Nebraska Press Association v Stewart* (1976) 427 U.S. 539.[2]

As a threshold matter, it must be noted that exclusion of our April 20, 2009 Petition from the main case file, removes all evidence that a key trial court judgment (which has subjected Defendants to repeated premature enforcement activity) is still under appeal. The absence of this document also makes it impossible for any judge, in the proceedings which still continue in Sonoma County Superior Court, to determine if our April 20, 2009 Appeal constitutes "sham litigation" (a key factor in the leading First Amendment Court Access case *BE & K Construction Co. v NLRB* (2002) 536 U.S. 516).**[3]**

I. Tortured Application of Vexatious Litigant Law

The Order of April 17, 2009 grossly distorts California's Vexatious Litigant Law (CCP § 391).**[4]** The Order concedes (at 6:4-5): "Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases." Yet the Order to Show Cause by Superior Court Judge Elaine Rushing, treats Defendants' five discretionary appeals, in the still ongoing selfsame unlawful detainer case, as five separate cases "all of which have finally been determined against you."**[5]**

There is nothing in ANY of these denials of discretionary appeals, which remotely approaches the "law of the case" definition for finality in an ongoing (or refiled) lawsuit.**[6]** The one-judge rulings in #1, #2, and #3 say only: "The petition for writ of mandate is denied." This is never a disposition on the underlying merits under California law, only a denial of extraordinary procedural relief per CCP § 1086.

The relief sought in #1 was an order requiring the Appellate Branch of the Sonoma County Superior Court to respond to Defendants' Motion for Rehearing (which pointed out that the necessary transcripts to show what the trial court had done, had not been available in time for briefing on this appeal). In a May 7, 2008 letter, the Clerk of the California Supreme Court declined to accept Appendices A and B which provided and analyzed the long-delayed transcripts, and the State Supreme Court denied review of #1 in #4, in an order which said only: "The petition for review is denied." However, as the case continued, procedural evasions became more obvious, and the State Supreme Court accepted our Appendices C, D, E & F documenting

this situation. This encouraged Defendants to resubmit the crucial portions of Appendices A & B, in Appendix G (which is part of the Case Appendix in Our April 20, 2009 Petition for Certiorari). Our effort to untangle the situation set forth in Appendix G is the focus of S171792, now nearing the end of preliminary briefing in the State Supreme Court (on whether to grant review).

In #5, the State Supreme Court's Order said re #2: "The petition for review is denied." The issue here is some aspects of a $10,000 attorney's fees award. (Other aspects did not become a matter of record until a $20,720 fees award was made on May 6, 2008, and are discussed in connection with #3, *infra*.) This is the focus of Defendants' April 20, 2009 Petition for Certiorari, and this aspect of the case will not become final until a decision is made on whether there are sufficient federal grounds to support granting Certiorari, or a decision on the merits if Certiorari is granted. It goes without saying that a California Superior Court cannot make a valid order to block review of its actions by the U.S. Supreme Court, which is what Judge Rushing is trying to accomplish with her misuse of CCP § 391.

In #3, the underlying issue was another line of attack on Defendants' right to appeal (a $20,720 reading fee not tied to any work product or any issue on which Plaintiff had been determined to be the prevailing party). In Defendants' view the $20,720 reading fee is an attempt to punish Defendants for documenting (for the benefit of higher courts) the gross misconduct in prior proceedings by Plaintiff's counsel, which is being aided and abetted by Judge Rushing.

After Defendants' Petition for Mandamus (which eventually became S171792) was filed, but before Appendix G was accepted by the State Supreme Court, review was denied (this denial related to a less inclusive Defendants' Mandamus Petition in #3). In order to protect our right to federal review (of what Defendants feel is a deprivation of $20,720 without Due Process of Law), we must file a Petition for Certiorari on this aspect of the case before May 19, 2009. Defendants feel that the main purpose of Judge Rushing's trying to convert five interlocutory appeals (we face yet another fees award now under appeal before the Appellate Branch) into separate cases, is an effort by her to cripple our ability to

secure federal review of our federal rights, in what is still only one case (MCV 191306).

II. Adverse Effect of Restraint on Normal Appeals

The right, asserted in the Order of April 17, 2009, of a Sonoma County Superior Court to control what is said in appeals from its own actions, while the first and only litigation involved in a vexatious litigant finding is still going on, does not pit the rights of an accused defendant to a fair trial against First Amendment rights of free expression, as in *Nebraska Press Association v Stewart.* It is Defendants' right of free expression that is at issue in *Paxinos v Halliwell & Parker* (as MCV 191306 was known in its trial phase). NO COURT OUTSIDE OF SONOMA COUNTY HAS SAID A SINGLE WORD IN SUPPORT OF THE MERITS OF THE RULINGS OF THAT SUPERIOR COURT, so it is the right of Sonoma County Superior Court judges to be a law unto themselves, that is on the opposite side of the scales from Defendants' fair trial and free expression rights. The wholesale abrogation of the Bill of Rights itself, can be seen by applying the facts of *Paxinos v Halliwell & Parker*, infra:

Nebraska Press Association v Stewart (1976) 427 U.S. 539, 559 observes:

> The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.**[a]** A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted.**[b]** Only after judgment has become final, correct or other-wise, does the law's sanction become fully operative.**[c]**
>
> A prior restraint, by contrast and by definition, has an immediate and irreversible sanction.**[d]** If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time.**[e]** The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events.**[f]** Truthful reports of public judicial proceedings have been afforded special protection against subsequent punishment.**[g]**

A. The entire burden on Plaintiff, of Defendants' five discretionary appeals has been "light as a feather" inasmuch as NOT ONE SINGLE WORD HAS BEEN FILED BY ANYONE IN SUPPORT OF THE PROCEDURES AND SUBSTANTIVE RULINGS CHALLENGED IN THESE FIVE

APPEALS, IN THE DISTRICT COURT OF APPEAL OR IN THE CALIFORNIA SUPREME COURT.

B. A self serving definition of finality (when Sonoma County Superior Court judges have made it plain that they have no intention of addressing an issue), has prevented MCV 191306 from ever reaching a stage where "all avenues of appellate review have been exhausted."

C. Attorney's fees judgments have been prematurely enforced**[7]** by disallowing Defendants' right to appeal at all, then (after Judge Robert Boyd's retreat in his Order of July 23, 2008), by disallowing Defendants' right to appeal to the State Supreme Court; then (after Judge Boyd's retreat in his Order of January 20, 2009), by disallowing Defendants' right to appeal to the U.S. Supreme Court (followed by Judge Boyd's recognition in his Order of April 17, 2009 that he had again acted prematurely – in sending James Parker to jail for refusing to obey his unlawful order).

D. The harassment of Defendants in premature OEX (Order of Examination) proceedings was an irreversible sanction, unless some court is willing to grant Defendants a "fresh clock" to make up for the

appeal preparation time we have lost in SIX OEX Contempt of Court Hearings and diversion of research effort thereto (we are both nonlawyers).

E. Sonoma County Superior Court judges have tried to "chill" Defendants self expression **i)** by tacitly supporting an UNREVIEWABLE $4000 payment to Plaintiff's lawyer, for the privilege of having a reasonable time to move out (while we were under threat from Judge Gary Nadler of denial of our right to trial by jury); **ii)** by imposing a $10,000 fees award for having resisted Plaintiff's $4,000 demand; **iii)** by adding a $20,720 fees penalty on Defendants for writing our side of contested issues into memoranda seeking to defend our procedural rights; and **iv)** by another $19,000 fees award for protesting the off-the-record seizure of the $10,000, and fighting against the $20,720 award. Since we have not knuckled under to these threats, the most blatant, totally encompassing, prior restraint on our right to appeal one could imagine, is being used to try to freeze us out of any federal enforcement of our federal rights.

F. We are trying to do nothing more than communicate our plight to some higher court, willing to set

pen to paper to explain where Sonoma County Superior Court is right and we are wrong. The events we wish to call attention to are distressingly current, and for the past two years have been so time consuming that we have had time for almost nothing else (including looking for full time work by the one of us below normal retirement age, and engaging in political activity by the one whose ballot access law-suit was listed by Judge Rushing, then abandoned at the April 14, 2009 hearing by Judge Beaupre, as a basis for a vexatious litigant finding).

G. One would think that the truthfulness of Defendants' reports of our judicial proceedings, would have been a factor in a proper assessment of whether we should be branded as vexatious litigants. However, Judge Beaupre's Order of April 17, 2009, simply counts up the number of appeals we have filed, and the number of judges who have refused to intervene on our behalf, rather than his citing a single issue, among the several dozen we have raised, where our position is other than solidly supported by governing precedent.

Since the clearest evidence for the truth of what we say is the evasiveness of those who seek to

silence us, we ask only for the opportunity to file our Petitions for Certiorari **free from harassment and interference.** Whether this requested protection requires modification of filing deadlines, we will leave until later. (We prefer to wait until after the other side has had an opportunity to respond to this Application.)

III. So What Are Sonoma County Judges Hiding?

California's Unlawful Detainer Secret Trial Law makes a determined effort to keep consultants from finding out about cases and informing tenants of their rights.**[8]** In Sonoma County**[9]**, according to the Recourse Mediation service which tenants are told to contact on their Notice of the provisions of CCP § 1161.2(c), NO TENANT HAS EVER WON BY INVOKING A RETALIATORY EVICTION DEFENSE IN SONOMA COUNTY.**[10]** Judge Rushing wouldn't allow the jury in *Paxinos v Halliwell & Parker* to be informed of any OTHER aspect of California laws against arbitrary discrimination in housing. Therefore, nearly all tenants challenging eviction in Sonoma County, have lost within the 60 days that secrecy is supposed

to be in force under CCP § 1161.2(c). However, in Sonoma County **the secrecy apparently lasts for the entire duration of the case**, if this is what is necessary to beat a tenant into submission. All of the Case File Folders are stamped Secret (see Exhibit V-1 at CR-1068), and whenever a hearing takes place the listing outside of the courtroom says only "Secret Case" without mention of the names of the parties involved.

Before the files were open to the public, back-dated documents were inserted into them (that were missing for weeks, during which time Deputy Clerk's attested to their absence) and the Court sometimes threw away or rejected motions presented by Defendants in open court, when the Judge (Gary Nadler on June 21, 2007 and Elaine Rushing on September 25, 2007) could not think of any caselaw to counter that cited by Defendants. After the file became "public," whole folders (as documented in Exhibit V-1, *supra*) were unavailable at crucial points in the case, such as when the basis for awarding $10,000 to Plaintiff's counsel was the fabrication that "JAMES PARKER did not oppose the motion." (CR-515). Defendants Noticed an

October 17, 2007 File Integrity Appeal, which has been completely stonewalled by Appellate Branch Presiding Judge Chouteau.

The CR (Case Record) designations above are Defendants' device (a serial numbered duplicate copy of all filings, which they submitted as part of their designations of the record on appeal), which Judge Chouteau abolished on February 5, 2008 (while also terminating briefing on Defendants November 21, 2007 Appeal from Judge Rushing's off-the-record turnover of $10,118 of Defendants' frozen assets to Plaintiff's attorney). With no Case Record numbering to substitute for the Chronological Index (which ended up taking three months to update), the June 26, 2008 hearing on the $10,118 asset turnover was cancelled.

Defendants filed a motion directed to the Presiding Judge of the Sonoma County Superior Court, challenging Judge Chouteau's "No Notice" change in designation of the record policy, but this was referred back to Judge Chouteau, who took no action on the motion until he signed an order which denied it on April 18, 2008. Then **another five**

weeks went by, before Judge Chouteau's "No Notice" motion denial was filed on May 23, 2008.

All of these interruptions in appeal briefing (or refusal to even allow briefing) and refusal to provide file security (or to allow file-integrity-protection counter-measures by Defendants) makes the secret trial policy for unlawful detainer actions (under state law) much more destructive of defendants' rights in Sonoma County. Without such abuses, many of the other procedural evasions in this case (by Plaintiff's counsel in collaboration with Judge Rushing) would not have been possible. Taken in its totality,**[11]** the way Unlawful Detainer trials are handled in Sonoma County, violates the public trial by jury**[12]** mandate of the Sixth and Seventh Amendments.**[13]**

California Transport v Trucking Unlimited (1972) 404 U.S. 508, 510 affirms: "The right of access to the courts is indeed but one aspect of the right to petition. See *Johnson v Avery* (1969) 393 U.S. 483, 485." *Johnson v Avery* cites its unconstitutional infringement of the right to petition as: "Only when he promised to refrain from assistance to other inmates was he restored to regular prison conditions and privileges." At our fork in the road, when we

had to decide whether to throw in the towel and pay $4,000 for giving up without a trial, a key factor in our decision was this question: "My God, what must be happening to other tenants facing eviction in Sonoma County,**[14]** less well versed in what the Rule of Law should be about, than we are?"

In *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 524, the U.S. Supreme Court unanimously reversed a decision (Sixth Circuit Court of Appeal (2001) 246 F.3d 619) to award attorney's fees based mainly (246 F 3d at 629-630) on the fact that "petitioner had filed an unmeritorious suit and realleged previously decided claims."**[15]** *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 524-525, found that the Sixth Circuit had placed an undue burden on the First Amendment right to seek redress of grievances via the courts, saying: "We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights,' *Mine Workers* v. *Illinois Bar Assn.* (1967) 389 U. S. 217, 222, and have explained that the right is implied by '[t]he very idea of a government, republican in form,' *United States v Cruikshank* (1876) 92 U.S. 542, 552.

BE & K Construction Co v NLRB (2002) 536 U.S. 516, 530, emphasizes**[16]** that even after-the-fact penalties on petitioning via the courts raises concerns, but notes:**[17]**

> By analogy to other areas of First Amendment law, one might assume that any concerns related to the right to petition must be greater when enjoining ongoing litigation than when penalizing completed litigation. After all, the First Amendment historically provides greater protection from prior restraints than after-the-fact penalties, see *Alexander* v. *United States*, 509 U.S. 544, 553-554 (1993), and enjoining a lawsuit could be characterized as a prior restraint, whereas declaring a completed lawsuit unlawful, could be characterized as an after-the-fact penalty on petitioning.

We can provide facts to prove that applicability of all the precedents cited above, if given the chance.

FOOTNOTES (NEWLY RELEVANT CASELAW)

Footnote [1]: Because we may have to also use this application as an updating of our April 20, 2009 Petition for Certiorari (pursuant to Rule 25.5), we use Rule 33.1(c) margins here. A copy of Defendants' Motion to Vacate Order of April 17, 2009 and its supporting documents accompanies this application (all of which have been previously provided to the Chief Justice of the California Supreme Court, the Presiding Judge of the Sonoma County Superior

Court and the Real Party in Interest).

Footnote [2]: Defendants request no immediate action, until the Respondent Sonoma County Superior Court has had sufficient time to rule on our April 27, 2009 Motion. We hope that the procedural precedent for handling the prior restraint orders in *Nebraska Press Association v Stewart* (1976) 427 U.S. 539, 545, fn 2 will be followed:

> Petitioners asked the District Court to stay its order. At the same time, they applied to the Nebraska Supreme Court for a writ of mandamus, a stay, and an expedited appeal from the order. In the interim, petitioners applied to MR. JUSTICE BLACKMUN as Circuit Justice for a stay of the State District Court's order. He postponed ruling on the application out of deference to the Nebraska Supreme Court, [citation]; when he concluded that the delay before that court had "exceed[ed] tolerable limits," he entered an order. [citation.]

Footnote [3]: The First Amendment right to petition via the courts does not provide immunity from all burdens one's legal activity may place on the rights of others. But *BE & K supra*, cites a very high threshold for penalizing a litigant for exercising the judicial aspect of the right to petition in *Professional Real Estate Investors (PREI) v. Columbia Pictures Industries* (1993) 508 U. S. 49, 51: "We hold that litigation cannot be deprived of immunity as a sham unless the litigation is objectively baseless." *PREI* (508 U.S. at 62) provides a strict definition of sham litigation: "Under the objective prong of the sham exception, the Court of Appeals correctly held that sham litigation must constitute the pursuit of claims so baseless that no reasonable litigant could realis-

tically expect to secure favorable relief." Squarely applicable governing precedents provide full protection but they are not essential, as *PREI* (508 U.S. at 65) affirms:

> By the time the Ninth Circuit had reviewed all claims in this litigation, it became apparent that Columbia might have won its copyright suit in either the Third or the Seventh Circuit. Even in the absence of supporting authority, Columbia would have been entitled to press a novel copyright claim as long as a similarly situated reasonable litigant could have perceived some likelihood of success.

Footnote [4]: The Order only quotes the underlined parts of CCP§ 391(b)(1)'s qualifying threshold: "In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been finally determined adversely to the person." (Id. at 6:3-4)

Footnote [5]: Judge Rushing's Order lists (3:4-15):

> **1)** Court of Appeal Case A121269, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 4/21/08, Writ Petition denied 4/25/08;
> **2)** Court of Appeal Case A123226, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 11/19/08, Writ Petition denied 11/26/08;
> **3)** Court of Appeal Case A123622, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 1/2/09, summarily denied 1/2/09;

4) Supreme Court Case S163276, *Halliwell et al v Superior Court of Sonoma County*, Petition for review of civil appeal filed 5/5/08, Petition denied 6/11/08; and
5) Supreme Court Case S168827, *Halliwell et al v Superior Court of Sonoma County*, Petition for review of civil appeal filed 12/8/08, Petition denied 1/21/09.

Footnote [6]: The California Supreme Court affirms in *People v Shuey* (1975) 13 Cal 3d 835, 841:

> Fortunately, fundamental rules of appellate review are specifically designed to preclude the possibility of this type of multiple litigation of the same issue. Among these is the doctrine known as the "law of the case" or the "law of the former decision." In the early case of Tally v. Ganahl (1907) 151 Cal. 418, 421, this rule was aptly described. "The doctrine of the law of the case is this: That where, upon an appeal, the supreme court, in deciding the appeal, states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal, and, as here assumed, in any subsequent suit for the same cause of action, and this although in its subsequent consideration this court may be clearly of the opinion that the former decision is erroneous in that particular."

Footnote [7]: Pursuant to CCP § 916(a) & 917.1(d), fees-and-costs-only judgments are automatically stayed until appeals are exhausted (without posting an appeal bond), in accordance with to governing

precedents such as *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655; *Nielsen v Stumbos* (1990) 226 CalApp.3d 301, 303; and *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475).

Footnote [8]: CCP § 1161.2(c) says [emphasis on the word "**and**" below is in Sonoma County's notice to tenants]:

> [A]ccess to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff **and** one defendant in the action **and** provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number **and** can establish through proper identification that he or she lives at the subject premises. (CR-044)

Footnote [9]: In exchange for this exclusion of outside help, defendants in Unlawful Detainer actions are supposed to be protected by Local Rule 2.2E, which limits their attorney's fees liability (in the normal court trials defendants are encouraged to accept) to $375. However, when Judge Nadler was acting as a mediator, he did not object when Charles Jensen set an UNREVIEWABLE payment of $4,000 as a condition for allowing defendants to leave voluntarily, after allowing them a reasonable period for them to find somewhere else to live. Defendants tried to make this outright attempted extortion part of their argument of bad faith by Plaintiff's counsel, but Judge Rushing threatened them with a contempt of court sanction if they said a word about this to the

jury. (See Transcript at 155:1-7)

Footnote [10]: Defendants are also supposed to be protected by Local Rule 2.2D (which bars the use of Tentative Rulings, which in other cases can deprive unrepresented litigants of a hearing, if they do not renew their request for one between 2 and 4 PM on the preceding day). Judge Rushing has repeatedly flouted Rule 2.2D, with all three of her fees awards. She makes a Tentative Ruling which says nothing about fees-related issues, but only serves to create obstacles which Defendants must overcome to prevent hearing cancellation (or secure a replacement hearing). Then during the hearing, Plaintiff's counsel says nothing at all in defense of his case, and Defendants are not allowed to conduct their own case. Judge Rushing then signs an unexplained (September 25, 2007, May 6, 2008, February 10, 2009) Order which has nothing of substance in it, except for reaffirming the fees award made in her Tentative Ruling.

Footnote [11]: The Bill of Rights is not FULLY applicable to the states, but many of its provisions are considered to be essential to Due Process of Law, and have therefore been binding on the states since the Fourteenth Amendment was ratified. Thus *Twining v State of New Jersey* (1908) 211 U.S. 78, 99 identifies the essential element of the incorporation doctrine "This contention requires separate consideration, for it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, *because a denial of them would be a denial of due process of law.*"

Footnote [12]: Article I, § 16 of the California Constitution provides: "Trial by jury is an inviolate right, but in a civil cause three-fourths of the jury may render a verdict." The rendering of a verdict without unanimity is not subject to challenge on Seventh Amendment grounds. This is so even though *Minneapolis & Saint Lous Railroad Co. v. Bombolis* (1916) 241 U.S. 211, 216 affirms: "It has been so long and so conclusively settled that the Seventh Amendment exacts a trial by jury according to the course of the common law – that is, by a unanimous verdict [citations]." However, *Bombolis, supra*, rejected a challenge to a 5/6 verdict threshold under the Minnesota State Constitution and its statutory law. *Bombolis* rejected the contention that "the defendant was by the Seventh Amendment to the Constitution of the United States entitled to have its liability determined by a jury constituted and reaching its conclusion according to the course of the common law, and hence to apply the state statute would be repugnant to the Seventh Amendment." *Bombolis* (241 U.S. at 217) cites *Twining, supra*, but does not find unanimity to be an essential element of Due Process.

Footnote [13]: However, where secrecy can be shown to be a violation of Due Process, in a state which provides a guarantee of jury trials in civil matters equivalent to that of the Seventh Amendment, the public trial mandate of the Sixth Amendment may be federally enforceable in state court. The first threshold consideration is whether an eviction is sufficiently akin to imprisonment, to make the protections for criminal defendants applicable. Because of Eight Amendment jurisprudence which has greatly improved jail conditions, the

absence of shelter and available meals, may well make eviction a more substantial immediate penalty than a jail sentence. Where secrecy is a deliberate device for making it difficult for unlawful detainer defendants to learn of their rights, the logic of *Gideon v Wainwright* (1963) 372 U.S. 335, 345 applies. In Unlawful Detainer actions, 90% of defendants are self represented, so this aspect of *Gideon, supra*, provides a close parallel: "*Even the intelligent and educated layman has small and sometimes no skill in the science of law.*" It is the purpose of CCP § 1161.2(c) to keep consultants from remedying this situation. And in Sonoma County Superior Court, the fortified version of this statute nearly guarantees the tenant will lose, thus creating another Gideon parallel: "*He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.*"

Footnote [14]: *Mine Workers v Illinois Bar Assn.* (1967) 389 U.S. 217, 221, describes the lower court ruling which the United States Supreme Court overturns: "The Illinois Supreme Court rejected petitioner's contention that its members had a right, protected by the First and Fourteenth Amendments, to join together and assist one another in the assertion of their legal rights by collectively hiring an attorney to handle their claims." *Mine Workers v Illinois Bar Assn.* (1967) 389 U.S. 217, 222 explains its reasoning:

> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both

> in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." Thomas v. Collins, (1945) 323 U.S. 516, 530, See De Jonge v. Oregon (1937) 299 U.S. 353, 364. The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. Schneider v. State (1939) 308 U.S. 147; Cantwell v. Connecticut (1940) 310 U.S. 296.

Mine Workers v Illinois Bar Assn. (1967) 389 U.S. 217, 225 concludes: "The decree at issue here thus substantially impairs the associational rights of the Mine Workers and is not needed to protect the State's interest in high standards of legal ethics."

Footnote [15]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 526-527 cites as a supporting precedent, the holding of *Bill Johnson's Restaurant, Inc. v NLRB* (1983) 461 U.S. 731, 737, which had overturned an order to the owner "to withdraw its suit and pay the defendants' legal expenses" because of "First Amendment and federalism concerns" and held "that the Board may not decide that a suit is baseless by making credibility determinations, as

the Administrative Law Judge had done, when genuine issues of material fact or state law exist." (461 U.S. at 745-747)

Footnote [16]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 532, notes that "the genuineness of a grievance does not turn on whether it succeeds." The opinion explains:

> Indeed, this is reflected by our prior cases which have protected petitioning whenever it is genuine, not simply when it triumphs. See, *e. g., Professional Real Estate Investors v. Columbia Pictures* (1993) 508 U. S. 49, 58-61 (protecting suits from antitrust liability whenever they are objectively or subjectively genuine) Mine Workers v Pennington (1965) 381 U.S. 657, 670 (shielding from antitrust immunity any "concerted effort to influence public officials"). Nor does the text of the First Amendment speak in terms of successful petitioning – it speaks simply of "the right of the people . . . to petition the Government for a redress of grievances."

Footnote [17]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 532 defends losing law suits:

> Like successful suits, unsuccessful suits allow the "'public airing of disputed facts,'" *Bill Johnson's Restaurant, Inc. v NLRB* (1983) 461 U.S. 731, 743 (quoting Balmer, Sham Litigation and the Antitrust Law, 29 Buffalo L. Rev. 39, 60 (1980)), and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around. Moreover, the ability to lawfully prosecute even unsuccessful

suits adds legitimacy to the court system as a designated alternative to force. See Andrews, A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right, 60 Ohio St. L. J. 557, 656 (1999) (noting the potential for avoiding violence by the filing of unsuccessful claims).

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FILED

April 17, 2009

Case No. MCV-191306

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants
_____/

FINDINGS AND ORDER AFTER HEARING ON PETITION FOR A FINDING OF VEXATIOUS LITIGANT PER CCP § 391

HISTORY

The Honorable Elaine Rushing, Judge of the Superior Court for Sonoma County, on the court's own motion issued an Order to Show Cause why Mr. Parker and Mr. Halliwell should not be found to be vexatious litigants per CCP § 391. Out of an abundance of caution Judge Rushing felt that a

visiting judge should review the situation and make the appropriate order. This court was appointed by the Chief Justice and assigned to hear the matter. This court reviewed all of the files relating to the Parker and Halliwell litigation in March of 2009. There were then 29 volumes. Prior to the hearing on April 14, 2009, the court reviewed the most re-cent files. Mr. Parker and Mr. Halliwell arrived at the hearing and initially sought a continuance. The stated reason was their need to prepare a brief to the United States Supreme Court. This motion was withdrawn and would have been denied if not withdrawn. They also presented additional briefing of 46 pages opposing any vexatious litigant finding.

On June 1, 2007, an unlawful detainer case was filed against Mr. James Parker (Paxinos v Parker, Case No. MCV 191306). Mr. Mike Halliwell was joined in the litigation pursuant to his prejudgment claim of right to possession of the premises since Mr. Parker had sublet part of the premises to him. Plaintiff claimed that this was not allowed by the rental agreement. Mr. Parker and Mr. Halliwell claimed that Mr. Paxinos had orally waived the "no sublet" agreement. The premises that Mr. Parker

had rented was 1041 Copeland Creek Drive in the Meadow Pines area. This is a subdivision governed by a homeowners association. Prior to service of the 60 day notice on Mr. Parker, the homeowners association had warned Mr. Paxinos that it would take action against him because of the alleged threatening behavior by his tenant Mr. Parker towards other tenants. Eventually, on March 28, 2007, the homeowners association fined Mr. Paxinos for four incidents of threats by Mr. Parker. Mr. Parker denied any threatening behavior. Defendants waived jury. Upon their motion and over plaintiff's objection, the court set aside the waiver and granted a jury trial. A two day jury trial was held. Plaintiff's case took 18 minutes to present while defendants consumed 11 hours. A verdict for plaintiff resulted. The jury specifically found that (1) There was a written rental agreement in effect between landlord and tenant Parker. (2) The landlord did not orally modify the rental agreement with his tenant Parker to allow subtenants; and (3) That the landlord issued the 60 day notice for a valid reason. Plaintiff was represented by Mr. Charles Jensen and defendants represented themselves.

Plaintiff received a judgment for $938.50 rental damages, $385.00 court costs, and restoration of the premises. The court deferred ruling on a request for attorney fees pursuant to the written rental agreement as to Mr. Parker. (Mr. Halliwell was not a signatory to any agreement with an attorney fees clause and thus had no liability under the lease). None the less Mr. Halliwell filed a 50 plus page document entitled "Defendants Memorandum in Response to Plaintiff's July 3, 2007 Settlement Inquiry". This curiously titled, voluminous document – to the extent it can be understood – seems to be an opposition to Mr. Jensen's claim for attorney fees. Mr. Jensen filed a brief response to Mr. Halliwell's documents indicating that there was no proceeding against Mr. Halliwell claiming attorney fees. Mr. Halliwell then filed numerous motions, affidavits, and requests for ex parte relief concerning the attorney fees issue. Mr. Halliwell filed various other post judgment motions and on July 24, 2007, Mr. Halliwell filed a notice of appeal. On August 28, 2007, the trial judge, the Honorable Elaine Rushing, held a hearing on the attorney fees issue. Mr. Halliwell was also present and improperly (he is not

an attorney representing Mr. Parker) sought to address the issue on Mr. Parker's behalf. Judge Rushing granted the attorney fee motion. On September 5, 2007, at the request of Mr. Parker and Mr. Halliwell, Judge Rushing set aside her order and rescheduled the attorney fee hearing to September 25, 2007. At that time, Judge Rushing explained at length to Mr. Halliwell that he would not be allowed to represent Mr. Parker. Attorney fees of $10,000 were granted against Mr. Parker. Despite Judge Rushing's explanation and warning, Mr. Halliwell filed multiple documents after the September 25, 2007 hearing attempting to attack the attorney fees order. He continues to this day to litigate the issue.

Mr. Parker and Mr. Halliwell pursued appeals with the Sonoma County Superior Court Appellate Division. They filed numerous motions and augmentations to the record. They filed at least seven appeals or other variously labeled proceedings with the Appellate Department. These were filed on July 24, 2007, August 29, 2007, September 26, 2007, October 17, 2007, February 1, 2008 and May 27, 2008. The record as supplemented by the defendants for the two day unlawful detainer trial is now

over 1,538 pages long, not including transcripts. Most of what was filed was frivolous and duplicative. Their documents are often completely undecipherable in that the reader is unable to determine what is at issue or how the material relates to the Unlawful Detainer action. They each filed opening briefs in four of the appeals which in reality are one vast brief far exceeding the court's limits on the length of moving papers (15 pages unless permission is otherwise granted). It is apparent that this tactic was adopted to circumvent court rules on the length of briefs. Mr. Parker and Mr. Halliwell then filed motions to the Presiding Judge requesting that all pending appeals (then between 4 and 6) be heard at separate proceedings. The only conceivable object of this tactic is delay. The multiple appeals filed by Mr. Parker and Mr. Halliwell of the Unlawful Detainer judgment was denied by the Appellate Division of the Sonoma County Superior Court. All the issues were thus fully determined against them as defined in CCP § 391.

In late 2008 an Order of Examination proceeding was commenced by Plaintiff in an attempt to collect his judgment. Mr. Halliwell again attempted to

represent Mr. Parker and was again denied. After multiple hearings and warnings Mr. Parker was held in contempt of court for refusing to answer questions propounded by Plaintiff's attorney.

Mr. Parker and Mr. Halliwell also filed a number of appeals, interlocutory appeals, and/or petitions for writ of mandate in the First District Court of Appeal and Supreme Court. These include:

A121269 in the First District Court of Appeal, Petition for Writ of Mandate filed April 21, 2008, denied April 25, 2008.

A123226 in the First District Court of Appeal, Petition for Writ of Mandate filed November 19, 2008, denied November 26, 2008.

A123622 in the First District Court of Appeal, Petition for Writ of Mandate filed January 2, 2009, summarily denied January 2, 2009.

S163276, in the California Supreme Court, Petition for review of Civil Appeal filed May 5, 2008, denied June 11, 2008.

S168827, in the California Supreme Court, Petition for review of Civil Appeal filed December 8, 2008, denied January 21, 2009.

S169634, in the California Supreme Court, Petition for review denied February 18, 2009.

These appeals all addressed issues which had been litigated and relitigated in the trial court and the Appellate Department of the Superior Court. A review of these appeals shows that they were utterly without any merit. Mr. Parker and Mr. Halliwell have never prevailed in any action. All cases were fully determined adversely against them as defined in CCP § 391(b)(1).

Mr. Parker and Mr. Halliwell have throughout their litigation accused Mr. Jensen, Judge Rushing, Judge Nadler, Judge Boyd, and Judge Chouteau (Presiding Judge of the appellate panel) as well as others, of engaging in a massive conspiracy to defeat their claims and "steal" money from them. There legal writings are replete with accusations of dishonesty, theft and removal or alteration of court files. There is absolutely no support for their bizarre claims.

They had a two day trial by a jury of their peers. They presented 11 hours of defense evidence contrasted to plaintiffs 18 minutes. They are unable to accept the verdict of their peers. They are unable to

accept the fact that they have lost every single appellate action. The money "stolen" from them is attorney fees ordered against Mr. Parker pursuant to a clause in the lease. **Unless restrained by a prefiling order they will never stop litigating.** This simple unlawful detainer case is now 35 volumes long. It takes up several feet of shelf space. It was transported to my chambers on a large multiple level wheeled trolley. The defendants have filed over 11,000 pages of pleadings in their various actions and venues. There has been an unconscionable waste of the court's time and resources. The real tragedy of this case is that the original plaintiff, Mr. Paxinos, has had to continue to pay his lawyer tens of thousands of dollars to review the materials and appear in court on this vexatious litigation.

FINDINGS

Mr. Parker and Mr. Halliwell are found to be Vexatious Litigants within the meaning of CCP § 391.

I

Mr. Parker and Mr. Halliwell have within the last four years prosecuted, or maintained in propria persona, five litigations . . . that have been . . .

finally determined adversely to them. CCP § 391(b)(1). Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases. They did however prosecute at least 14 non-meritorious appeals in the Appellate Division of the Superior Court of Sonoma County, the First District Court of Appeal and the California Supreme Court. See *McColm v Westwood Park Association* (1998) 62 Cal.App.4th 1211.

II

Mr. Parker and Mr. Halliwell have repeatedly relitigated or attempted to relitigate, in propria persona, the validity of the determinations against them where the findings against them had been finally determined. CCP § 391(b)(2)(I) and (II).

III

Mr. Parker and Mr. Halliwell, while acting in propria persona, repeatedly filed unmeritorious motions, pleadings, or other papers, and engaged in other tactics which were frivolous or solely intended to cause unnecessary delay. CCP § 391(b)(3).

ORDERS AS TO BOTH MR. PARKER AND MR. HALLIWELL

Each individual having been found to be a vexatious litigant it is ordered that:

1. In Sonoma County, James Parker and Michael Halliwell may not file any further litigation in propria persona. "Litigation" is defined as any new case, any petition, application, motion, or any other document no matter how entitled or described in any existing case, or any appeal or request to the appellate division no matter how entitled. This order does not apply if the Presiding Judge of the Sonoma County Superior Court first approves filing of the Litigation. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge may require as a condition to filing the document that security be posted to cover the opposing parties attorney fees, and costs as described in CCP § 391.7

2. Mr. Parker or Mr. Halliwell may not file any new litigation, as previously defined, in propria persona in any court in California, of any nature unless the Presiding Judge of that County Superior Court first approves the filing of that document. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge may require as a condition to filing the document that security be posted to cover the

opposing parties attorney fees, and costs as described in CCP § 391.7

3. Neither Mr. Parker or Mr. Halliwell may file any appellate litigation, as previously defined, in propria persona, unless the Presiding Judge of the Court of Appeal or of the Supreme Court first approves the filing of that document. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge of the Court of Appeal or Supreme Court may require as a condition to filing the document that security be posted to cover the opposing parties attorney fees, and costs as described in CCP § 391.7

4. If Mr. Parker or Mr. Halliwell seek to file any new litigation in propria persona, as previously defined, they must first file a petition with the Presiding Judge of the court in which the new litigation is to be filed. This request must be accompanied by an affidavit under penalty of perjury which provides facts and legal authority explaining to the court with specificity why this litigation has merit. See *Fresno County Department of Children and Family Services vs. R.H.* (2009) DJDAR 1265.

5. In the event that Mr. Parker or Mr. Halliwell are allowed by a Presiding Judge to file any new

litigation, as previously defined, in propria persona in any court in California, they must serve written notification within ten calendar days to any adverse party of their status as vexatious litigants.

6. In the event that Mr. Parker or Mr. Halliwell are allowed by a Presiding Judge to file any litigation in propria persona in any case they shall not exceed any limitation on length of pleadings in the applicable Rules of Court. In Sonoma County that limit is 15 pages.

7. Mr. Parker and Mr. Halliwell are warned that any violation of this order is punishable as contempt.

DATED: April 16, 2009

DEAN A. BEAUPRE, RETIRED
JUDGE OF THE SUPERIOR COURT
Sitting on Assignment from
Administrative Office of the Courts

HON. DEAN A BEAUPRE
JUDGE OF THE SUPERIOR COURT, RETIRED
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FILED

April 17, 2009

Case No. MCV-191306

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER TO THE CLERK
OF THE COURT

JAMES PARKER, et al.,
Defendants
_____/

TO: THE CLERK OF THE COURT

Mr. James Parker and Mr. Michael Halliwell (Case No. MCV-191306 and other cases) have been found to be vexatious litigants within the meaning of CCP § 391. See attached finding and order.

The Clerk of the Court is to notify the Judicial Council by providing a copy of the prefiling order as well as this order. The Clerk of the Court is to take any other steps required to notify the Judicial

Council that a prefiling order exists as to Mr. Parker and Mr. Halliwell.

The Clerk of the Court is not to file any litigation in propria persona presented by Mr. Parker or Mr. Halliwell unless the document is approved for filing by the Presiding Judge (CCP § 391.7). "Litigation" is defined as any new case, any petition, application, motion, or any other document no matter how entitled or described in any existing case or any appeal or request to the appellate division no matter how entitled.

Should Mr. Parker or Mr. Halliwell attempt to file any further litigation in propria persona without approval of the Presiding Judge, the documents will be stamped as "received, but not filed". The incident shall be reported to the Presiding Judge for possible contempt proceedings.

Mr. Halliwell and Mr. Parker have been provided a copy of this order.

DATED: April 16, 2009

DEAN A. BEAUPRE, RETIRED
JUDGE OF THE SUPERIOR COURT
Sitting on Assignment from
Administrative Office of the Courts

No. 09-172

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

PETITION FOR REHEARING

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
271 E. Cotati Ave. Cotati CA 94931
707-795-5526, halliwel@csulb.edu

November 5, 2009

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09-172 CERTIORARI REHEARING PETITION

Since Presiding Judge Nadler sent Defendants his letter of August 18, 2009 justifying his rejection of all of Defendants' attempted filings, because they did not accompany their submissions with Form MC-701 (which says on its face that it is OPTIONAL), Judge Nadler's effort to make Judge Beaupre's Vexatious Litigant Order of April 17, 2009 all encompassing and unappealable has intensified. Because of a complicated foul-up in notification, Defendants did not learn of Judge Nadler's Order to Show Cause (OSC) issued on September 4, 2009, until October 6, 2009.

None of the submissions by Defendants (trying to untangle the Vexatious Litigant snare they find themselves trapped in) constitute "filing new litigation" according to MC-701's own definition ("commencing any civil action or proceeding").

However, Judge Nadler is threatening us with contempt of court sanctions, because some of our submissions are longer than the page limit set by Judge Beaupre for "new litigation," and because we only recently have submitted our attempted filings in affidavit form (as required by Form MC-701). By placing this "sword of Damocles" over Defendants (with an OSC hearing date of December 4, 2009), Judge Nadler has interfered with our ability to effectively prosecute our Supreme Court appeals (09-171, 09-172 & 09-199).

It should be emphasized that Defendants do not seek to involve this Court in the Vexatious Litigant quagmire AT THIS TIME. The step we seek before December 4, 2009, a step which this Court should probably take in ALL cases with a pattern of undisputed facts resembling ours, is to request a response, pursuant to Rule 44.3.

1. Fraudulent turnover of Defendants' $10,118

One aspect of this case is unambiguously clear (and was recognized by Judge Boyd in his Order of July 23, 2008): Under California law, a judgment consisting entirely of attorney fees and other costs, is automatically stayed (without an appeal bond) by CCP §§ 916(a) and 917.1(d), while it is under appeal. (*Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655) On **September 26, 2007**, the day after Judge Rushing announced the $10,000 fees award discussed below, and again on **November 21, 2007**, the day after Judge Rushing erroneously ruled that our prior appeals of this $10,000 award were invalid (notwithstanding CRC 8.750(a) to the contrary), Defendants appealed this $10,000 fees award. The FIRST Appeal Hearing in this case was on **January 28, 2008**. Therefore, Judge Rushing was without jurisdiction to take the action documented below,

and without any semblance of jurisdiction, to act without notification to Defendants or placing any indication of that action in the case file. Appendix H in California Supreme Court proceedings (at 108:23 to 109:12) cites this "smoking gun" re the $10,118 turnover, by Judge Rushing:

> Defendants' Memo to Sheriff Cogbill re Circumvention of Their 11-21-07 Claim of Exemption notes (27:11 to 28:6): "When Defendants contacted the Sheriff's Department (immediately after a remark by Charles Jensen at the January 24, 2008 hearing suggested that he might already have Defendants' $10,118), it was absolutely impossible to come away with anything in writing (in spite of a protracted conversation with staff members who apparently spent HOURS talking with their superiors and Sonoma County Superior Court personnel). Whatever higher official made the decision was not disclosed by the Deputies at the window, but the position was firm: 'We don't give out information to people in your circumstances, you have to check the court file.' It was with the greatest difficulty that we were able to confirm WHEN the Sheriff's Department acted in response to direction by Judge Elaine Rushing (which Defendants needed to know in order to determine WHERE in the chronological Case File and Docket to check.) The acknowledged fact that the process of issuing

a check to Charles Jensen (drawn on our funds) did not begin until November 27, 2007 indicated that whatever the court sent to the Sheriff to facilitate turning over our $10,188 to Charles Jensen was almost certainly not sent until at least five days after our November 21, 2007 Notice of Appeal (and the immediate renewal of Defendants' Claim of Exemption based on having thus eliminated the ground for its denial on November 20, 2007.) *The bottleneck was broken open on* ***May 7, 2008****, when the Sheriff's Civil Bureau Manager Elizabeth J. Warren agreed to release a copy of what Judge Rushing sent to effectuate turning over Defendants' frozen $10,118 to Charles Jensen. It turned out to be a copy of the Courtroom Minutes of 11/20/2007* ***SIGNED AND CERTIFIED ON NOVEMBER 26, 2007.***

On **May 6, 2008**, Judge Rushing signed an unexplained order awarding $20,720 more in attorney fees to Plaintiff's counsel, for nothing more than **reading** our protests re counsel's abuses of Defendants' procedural rights. When this $20,720 penalty did not deter us from exercising our right to appeal, Judge Rushing filed her Vexatious Litigant initiative on **February 9, 2009** (where she absurdly classified our appeals of her fees awards as meeting

the requirement of CCP § 391 of five losing litigations in the preceding seven years). On **February 10, 2009**, Judge Rushing awarded $19,000 more in attorney fees to Charles Jensen, which Defendants appealed on March 10, 2009. Briefing on our **March 10, 2009** appeal was initiated with a May 6, 2009 order, but our May 26, 2006 opening briefs were retroactively invalidated, as a violation of Judge Beaupre's **April 17, 2009** Vexatious Litigant Order). Defendants are NOT trying to unravel the cover-up, which is the purpose of Judge Rushing's Vexatious Litigant initiative, only to show that adequate precedent exists to eventually rectify any fraud we are able to prove, after the fact-finding proceedings in Federal District Court, which we seek.

Hazel-Atlas Glass Company v. Hartford Empire Company (1944) 322 U.S. 238, 241-242 observes:

> After the opinion of the Circuit Court came down on May 5, 1932, quoting the spurious article and reversing the decree of the District Court, Hazel hired investigators for the purpose of verifying the hearsay by admissible evidence. . . . .
>
> In the second interview the investigator asked Clarke to sign a statement telling in detail how the article was prepared, and further asked to see Clarke's files. Clarke replied that he would not "stultify" himself by signing any "statement or affidavit"; and that he would show the records to no one unless compelled by a subpoena.

Plaintiff's attorney also refuses to respond to Defendants' misconduct charges against him. *Hazel-Atlas* explains (322 U.S. at 247) that fraud on higher courts is fully reviewable (especially when a lower court aids and abets such fraud):

> We have, then, a case in which undisputed evidence filed with the Circuit Court of Appeals in a bill of review proceeding reveals such fraud on that Court as demands, under settled equitable principles, the interposition of equity to devitalize the 1932 judgment despite the expiration of the term at which that judgment was finally entered.

Hazel-Atlas observes (322 U.S. at 250):

> The total effect of all this fraud, practiced both on the Patent Office and the courts, calls for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced. Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial.

Hazel-Atlas concludes (322 U.S. at 251):

> The judgment is reversed with directions to set aside the 1932 judgment of the Circuit Court of Appeals, recall the 1932 mandate, dismiss Hartford's appeal, and issue mandate to the District Court directing it to set aside its judgment entered pursuant to the Circuit Court of Appeals' mandate, to reinstate its original judgment denying relief to Hartford, and to take such additional action as may be necessary and appropriate.

Shakee Manufacturing Co. v Harford-Empire Co. (1944) 322 U.S. 271, 273 observes:

> While the appeal was pending final disposition in the Circuit Court, Shawkee's counsel communicated with Judge Buffington charging that the Clarke article was spurious; but at that time Shawkee had no direct proof of its charge. That proof, as pointed out in Hazel-Atlas Glass Co. v Hartford Empire Co. (1944) 322 U.S. 238, was available only after the United States offered its evidence in the anti-trust suit in 1941. None of

these facts, we think, should deprive Shawkee and the others of relief against Hartford's fraudulent conduct.

Shakee Manufacturing (322 U.S. at 274) held:

The judgment of the Circuit Court of Appeals is reversed. The cause is remanded to it with directions to set aside its 1934 judgment, recall the mandate, and dismiss the appeal; and issue mandate to the District Court with directions to set aside its judgment finding Hartford's patent valid and infringed, deny Hartford all relief against infringement of this patent and permit Shawkee and the others to bring such further proceedings as may be appropriate in accordance with their prayer for relief.

Matter of Whitney-Forbes, Inc. (1985) 770 F.2d 692, 698, focuses on the key criterion:

Fraud on the court involves a particular type of fraud which is directed to the judicial machinery itself (Bulloch v. United States (1983) 721 F.2d 713, 718) and which involves circumstances where the impartial functions of the court have been directly corrupted.

2. Defendants' penalty for exhausting remedies

By turning over $10,118 of Defendants' funds without mandatory appellate review and eliminating

required appeals on later fees awards, Sonoma County Superior Court has violated *Lindsey v Normet* (1972) 405 U.S. 56, 77, which held:

> This Court has recognized that if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review [5 citations] and the continuing validity of these cases is not at issue here. When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause. [7 citations]

Charles Jensen demanded an unreviewable $4,000 payment in Judge Nadler's presence and this demand was backed up by Judge Nadler's threat to deny Defendants a jury trial. $4,000 was twice as large as the rent involved in the dispute (which the landlord refused to accept before eviction). Jensen's $4,000 demand had no basis in state law or Sonoma County Superior Court Local Rules (which sets $375 as the standard fee for a **completed** court trial).

The discrimination against Defendants in *Paxinos v Halliwell & Parker*, was as much of a violation of Equal Protection as the broader policy invalidated in *Lindsey v Normet* (1972) 405 U.S. 56, 77, 79:

> The discrimination against the poor, who could pay their rent pending an appeal but cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The nonindigent FED appellant also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon. The discrimination against the class of FED appellants is arbitrary and irrational, and the double-bond requirement of ORS 105.160 violates the Equal Protection Clause.

Bankers Life & Casualty Co. v Crenshaw (1988) 486 U.S. 71, 82-83 analyzes the Court's holding in *Lindsey v Normet* (1972) 405 U.S. 56:

> We agreed with the appellants that the double-bond (405 U.S. at 83) requirement violated the Equal Protection Clause. We noted that the requirement was "unrelated to actual rent accrued or to specific damage sustained by the landlord." (405 U.S. at 77) Moreover, the requirement, which burdened only tenants, including tenants whose appeals were nonfri-

> volous, erected "a substantial barrier to appeal faced by no other civil litigant in Oregon." (405 U.S. at 79) We therefore concluded that the requirement bore "no reasonable relationship to any valid state objective" and that it discriminated against the class of tenants appealing from adverse decisions in wrongful-detainer actions in an "arbitrary and irrational" fashion. (405 U.S. at 76-77, 79). As Lindsey demonstrates, arbitrary and irrational discrimination violates the Equal Protection Clause under even our most deferential standard of review.

Boddie v Connecticut (1971) 401 U.S. 371, 379, affirms the "root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." (Accord: *Memphis Light, Gas & Water Division v Craft* (1978) 436 U.S. 1, 19). *Boddie, supra*, notes:

> Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question.

Judge Beaupre's April 17, 2009 Order punishes Defendants for filing required discretionary appeals,

and erects a permanent barrier to filing any appeals at all.

United States ex rel. Kennedy v Tyler (1925) 269 U.S. 13, 17 cites a well established basic principle:

> In the regular and ordinary course of procedure, the power of the highest state court in respect of such questions should first be exhausted. When that has been done, the authority of this court may be invoked to protect a party against any adverse decision involving a denial of a federal right properly asserted by him. (Accord: Ex Parte Hawk (1944) 321 U.S. 114, 117-118; Rose v Lundy (1982) 455 U.S. 509, 515; Granberry v Greer (1987) 481 U.S. 129, 134)

Keeney v Tamayo-Reyes (1992) 504 U.S. 1, 10, supports Defendants' thorough documentation:

> In requiring exhaustion of a federal claim in state court, Congress surely meant that exhaustion be serious and meaningful. The purpose of exhaustion is not to create a procedural hurdle on the path to federal habeas court, but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before resort to federal court. Comity concerns dictate that the requirement of exhaustion is not satisfied by the mere statement of a federal claim in state court. Just as the State must afford the petitioner a full and fair hearing

> on his federal claim, so must the petitioner afford the State a full and fair opportunity to address and resolve the claim on the merits.

Picard v Connor (1971) 404 U.S. 270, 275 held:

> We emphasize that the federal claim must be fairly presented to the state courts. If the exhaustion doctrine is to prevent "unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution" (Ex parte Royall (1886) 117 U.S. 241, 251), it is not sufficient merely [to go through the motions].

3. Over-broad First Amendment infringement

Judge Beaupre's April 17, 2009 Order defines "new litigation" so broadly, that it vitiates our First Amendment court access rights. *Alexander v United States* (1993) 509 U.S. 544, 554 observes:

> The doctrine of prior restraint originated in the common law of England, where prior restraints of the press were not permitted, [and] . . . . was held inconsistent with our First Amendment as long ago as Grosjean v. American Press Co., 297 U.S. 233, 246 (1936).

BE & K Construction Co v NLRB (2002) 536 U.S. 516, 530 observes:

> By analogy to other areas of First Amendment law, one might assume that any concerns related to the right to petition must be greater when enjoining ongoing litigation . . . . [since] the First Amendment historically provides greater protection from prior restraints . . . and enjoining a lawsuit could be characterized as a prior restraint.

Judge Beaupre's prior restraint is so broad that it bars appellate review of even his own Vexatious Litigant Finding.

BE & K Construction (536 U.S. at 525) cites *Mine Workers v Illinois Bar Assn.* (1967) 389 U.S. 217, 222, re the Supreme Court's recognition of the First Amendment right to petition as one of "the most precious liberties safeguarded by the Bill of Rights."

Mine Workers v Illinois Bar Assn. (389 U.S. at 221) describes the lower court ruling which the Supreme Court overturns: "The Illinois Supreme Court rejected petitioner's contention that its members had a right, protected by the First and Fourteenth Amendments, to join together and assist

one another in the assertion of their legal rights by collectively hiring an attorney to handle their claims."

Mine Workers (389 U.S. at 222) explains:

> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." Thomas v. Collins, (1945) 323 U.S. 516, 530, See De Jonge v. Oregon (1937) 299 U.S. 353, 364. The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. Schneider v. State (1939) 308 U.S. 147; Cantwell v. Connecticut (1940) 310 U.S. 296.

Mine Workers (389 U.S. at 225) concludes:

> The decree at issue here thus substantially impairs the associational rights of the Mine Workers and is not needed to protect the State's interest in high standards of legal ethics.

Defendants can show in our case, that we have done NOTHING to violate California's Vexatious Litigant Law (CCP § 391). This law has been stretched beyond all recognition to sidetrack federal review of the file tampering, which was used to set our trial date much too early. This premature trial date eliminated any opportunity for discovery, undermined fact finding, and thus vitiated protections against the use of anonymous evidence.

Certificate re Grounds for Rehearing

Self represented Appellants Michael Halliwell and James Parker hereby affirm that this Petition for Rehearing is submitted not for delay, and as the most feasible way of extricating themselves from the effort below to thwart compilation of an accurate factual record, a clear delineation of the legal issues being suppressed, and to make Judge Beaupre's Vexatious Litigant Order of April 17, 2009 into an unappealable law unto itself.

We affirm that our Petition is a good faith effort to inform the Court of controlling developments since our previous submissions, related new case law citations, and a minimum of background to tie in with our October 14, 2009 Supplemental Brief.

_____

Michael Halliwell

_____

James Parker